REPORTS

OF

Cases Argued and Determined

IN THE

COURT OF CLAIMS

OF THE

STATE OF ILLINOIS

VOLUME 5

Containing cases in which Opinions were filed between July 1, 1923 and June 30, 1927

SPRINGFIELD, ILLINOIS
1927

[Printed by authority of the State of Illinois.]

SCHNEPP & BARNES, PRINTERS
SPRINGFIELD, ILL.
1928
81312—1,500

PREFACE

The opinions of the Court of Claims herein reported, are published by authority of the provisions of Section 9 of an Act entitled, "An Act to create the Court of Claims and to prescribe its powers and duties," approved June 25, 1917, in force July 1, 1917.

LOUIS L. EMMERSON,
Secretary of State
and Ex-officio Secretary Court of Claims.

JUSTICES OF THE COURT OF CLAIMS

A. J. CLARITY, *Chief Justice.*

WILLIAM L. LEECH, *Judge.*

B. F. THOMAS, *Judge.*

OSCAR E. CARLSTROM, *Attorney General.*

LOUIS L. EMMERSON, *Secretary of State and Ex-officio Secretary of the Court.*

RULES OF THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

TIME OF COURT SESSIONS.

RULE 1. The Court of Claims shall hold a session of the Court at the Capitol of the State on the *Second Tuesday* of January and the *Second Tuesday* of September of each year and may continue its sessions or may adjourn from time to time as it deems proper until the business before it is disposed of.

THE DECLARATION.

RULE 2. Causes shall be commenced by a verified declaration or statement, which together with four copies thereof, shall be filed with the clerk of the court at least sixty days before the term of Court, to which term it is directed. The clerk will note thereon the date of filing and will submit a copy thereof to the Attorney General.

RULE 3. Such declaration shall be printed or typewritten and shall be captioned substantially as follows:

IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

A. B.

v. No.....

STATE OF ILLINOIS

RULE 4. Such declaration shall state concisely the facts upon which the claim is based, setting forth the time, place, amount claimed, and all other facts necessary to a full understanding of the same. If the claimant bases his claim upon a contract or other instrument in writing, a copy of such contract or instrument shall be filed with the declaration, together with the name and present address of the officer or agent with whom such contract or instrument was made.

RULE 5. The claimant shall state whether or not his claim has been presented to any State department or State officer, or to any person, corporation or tribunal, and if it had been presented he shall further state when, to whom, and what action was taken thereon; and he shall further state whether or not he has received any payment on account of such claim. The claimant shall also state whether or not any other person has any interest in his claim, and if any other person has such interest the claimant shall state the name of the person, his interest and how and when acquired. A bill of particulars, stating in detail each item and the amount claimed on account thereof, shall be attached to the declaration.

VERIFICATION OF DECLARATION.

RULE 6. No declaration shall be filed by the clerk unless verified under oath by the claimant, or some other person having knowledge of the facts. If the declaration be verified by anyone other than the claimant, a power of attorney authorizing him to prosecute the suit or make the verification must be annexed to the declaration and filed therewith.

RULE 7. If claimant be an executor, administrator, guardian or other representative appointed by a judicial tribunal, a duly authenticated copy of the record of appointment must be filed with the declaration.

RULE 8. If the claimant die pending the suit, his death may be suggested on the record, and his proper representatives, on filing a duly authenticated copy of the record of his appointment as executor or administrator, may be admitted to prosecute the suit without special leave, but subject to the objection of the defendant either before or at the trial. If the suggestion of death be made when the case is called for trial, the court may allow time within which a personal representative may be appointed or appear. It is the duty of the claimant's attorney to suggest the death of a claimant when the fact becomes known to him.

RULE 9. Pleadings and practice at common law as modified by the Illinois Practice Act shall be followed. Four copies of all pleadings shall be filed, together with the original.

AMENDMENT TO DECLARATION.

RULE 10. A claimant desiring to amend his declaration or to introduce new parties may do so at any time before he has closed his testimony, without special leave by filing five copies of amended declaration, embodying the amendments desired, but any such amendments or the right to introduce new parties shall be subject to the objection of the defendant either before or at the trial. Any subsequent amendments must be by leave of court.

RULE 11. The declaration and the four copies thereof, and any amendment thereto, shall be provided with a suitable cover, upon which shall be printed or plainly written the title of the court and cause together with the name and address of the attorney and the name and address of the claimant.

RULE 12. The State shall plead within thirty days after the filing of the declaration unless time for pleading be extended; provided, that if the State shall fail to so plead a general traverse of the declaration shall be considered as filed.

RULE 13. Counter-claims or set-offs on the part of the State shall be filed with the clerk within the time fixed for pleading by the State. The claimant shall reply to the same within fifteen days thereafter, unless the time for pleading be extended.

STATUTE OF LIMITATIONS.

RULE 14. If it appear on the face of a declaration that the claim is barred by the statute of limitations the same may be dismissed.

EVIDENCE.

RULE 15. After a cause is at issue the parties may take evidence before a notary public or commissioner appointed by the court or by any judge thereof, who shall designate the time and place and the officer before whom the testimony shall be taken and shall transmit the order to the clerk, who shall thereupon enter the same of record as an order of the court and shall issue a dedimus to such officer.

RULE 16. All evidence shall be taken in writing in the manner in which depositions in Chancery are usually taken and upon like notice. All evidence for the claimant shall be filed with the clerk at least thirty days before the first day of the term of court to which the pleadings are directed and all evidence for the defendant shall be filed on or before the first day of such term.

RULE 17. All costs and expenses of taking evidence on behalf of the claimant shall be paid by the claimant, and the costs and expenses of taking evidence on behalf of the State shall be paid by the State.

RULE 18. If the claimant fails to file the evidence in his behalf as herein required the court may, in its discretion, fix a further time within which the same shall be filed and if not filed within such further time the cause may be dismissed. Upon motion of the Attorney General the court may, in its discretion, extend the time within which evidence on behalf of the State shall be filed.

RULE 19. If the claimant has filed his evidence in apt time and has otherwise complied with the rules of the Court, he shall not be prejudiced by the failure of the State to file evidence in its behalf in apt time, but a hearing shall be had upon the evidence filed by the claimant, unless for good cause shown, additional time to file evidence be granted to the State.

RULE 20. In case a demurrer to a declaration is overruled, the State shall plead within five days and the claimant shall have twenty days thereafter within which to file his evidence, and the State shall have ten days thereafter within which to file its evidence. Thereupon the claimant shall have fifteen days within which to file his abstracts and briefs and the State shall have fifteen days thereafter within which to file its abstracts and briefs.

RULE 21. If a demurrer be sustained, the claimant may by leave of court, amend his declaration within such time as the court may direct; but if he decline or fail to amend, judgment will be rendered dismissing the case.

ABSTRACTS AND BRIEFS.

RULE 22. The abstract and brief of the claimant, together with proof of service of copies of such abstract and brief on the defendant must be filed in the clerk's office on or before fifteen days before the first day of the term to which the cause will stand for hearing unless the time for filing the same is extended by the Court or one of the Judges thereof. The defendant shall file his brief with like proof of service not later than the first day of the term unless the time for filing the brief of claimant shall be extended, in which case he shall have twenty days from the date on which the brief of the claimant is served

upon him. Claimant shall have seven days from the date on which the brief of defendant is served upon him on which to file a reply brief with like proof of service. Upon good cause shown, further time to file the abstract or the brief of either party may be granted by the court, while in session by any judge thereof, or at other times only upon written notice filed with the Clerk while in session, or with one of the judges at other times.

RULE 23. Each party shall file with the clerk five printed or typewritten abstracts of the evidence taken on behalf of such party.

RULE 24. Each party shall file with the clerk five printed or typewritten briefs setting forth the points of law upon which reliance is had, and reference to the authorities sustaining the same. Accompanying such briefs there may be a statement of the facts and an argument in support of such briefs.

RULE 25. If a claimant shall fail to file either abstracts or briefs within the time prescribed by the rules, the Court may enter a rule upon him to show cause by a day certain why his cause should not be dismissed. Upon the claimant's failure to comply with such rule, the cause may be dismissed, or the Court may, in its discretion, either extend the time for filing abstracts or briefs, or pass or continue the cause for the term, or determine the same upon the evidence before it; provided, however, that the State may within ten days after the filing and service of briefs by the claimant file its abstracts and briefs.

RULE 26. If the claimant has filed abstracts and briefs, as herein provided, in apt time, and has otherwise complied with the rules he shall not be prejudiced by the failure of the State to file abstracts or briefs on time, unless the time be extended for the filing of abstracts or briefs by the State.

RULE 27. Where by these rules it is provided that the time may be extended for the filing of pleadings, abstracts or briefs, either party upon notice to the other, may make an application to any judge of this Court, who may make an order thereon, transmitting such order to the clerk, and the clerk shall thereupon enter the same of record as an order of the Court.

MOTIONS.

RULE 28. Motions shall be filed with the clerk at least one day before they are presented to the court and must be submitted at least one day before the cause stands for hearing. All motions will be presented by the clerk immediately after the daily announcements of the Court but at no other time during the day, unless in case of necessity or in relation to a cause when called in course. All motions and suggestions in support thereof shall be in writing, and when the motion is based on matter that does not appear of record it shall be supported by affidavit. Before a motion can be filed, proof that a copy of the motion and suggestions in support thereof have been served on counsel for the opposite party at least twenty-four hours before the motion is presented for filing shall be filed with the clerk, unless such service shall be shown by affidavit to be impracticable. Objections to motions must be in writing and must be filed within twenty-four hours after the

motion is presented to the clerk for filing. All motions shall be submitted without oral argument upon the written suggestions and affidavits for and against the motions.

ORAL ARGUMENTS.

RULE 29. Either party desiring to make oral arguments shall file a notice of his intention to do so with the clerk at least ten days before the session of the court at which he wishes to make such argument.

PETITION FOR REHEARING.

RULE 30. A party desiring a rehearing in any cause shall within fifteen days after filing of the opinion, file with the clerk a notice in writing of his intention to ask for a rehearing, and within twenty-five days after the filing of the opinion, he shall file with the clerk five copies of the petition with proof of service on opposite party. The petition shall state briefly the points supposed to have been overlooked, or misapprehended by the court with proper reference to the particular portion of the original abstract and brief relied upon and with authorities and suggestions precisely stated in support of the points. Argument in support of the petition will not be permitted.

DOCKETING REHEARING.

RULE 31. When a rehearing is granted, the original briefs of the parties and the petition for rehearing, answer and reply shall stand as files in the case on rehearing. The opposite party shall have fifteen days from the granting of the rehearing, to answer the petition and the petitioner shall have five days to file his reply. Copies of each shall be served on opposing counsel.

COVER FOR PLEADINGS.

RULE 32. All pleadings filed must be provided with a suitable cover. The title of the court and cause, together with name of the plea, motion, brief and argument, shall be printed or plainly written on the cover of all such documents filed.

FOREIGN ATTORNEYS.

RULE 33. Any foreign attorney who files declaration for claimant in this court on motion of any resident attorney of this State may be admitted to practice in that case in this court.

RECORDS AND CALENDAR.

RULE 34. The clerk shall record all orders of the court, including the final disposition of causes. He shall keep a docket in which he shall enter all claims filed, together with their numbers and dates of filing, the names of claimants, of attorneys of record and their addresses, and he shall, as papers are filed, enter the same upon such docket. At least ten days prior to each session of the court he shall prepare a calendar of the causes to be disposed of at such session.

REFERENCE BY GENERAL ASSEMBLY.

RULE 35. Where any claim has been referred to the court by either House of the General Assembly any person interested therein

may file a verified declaration at any time prior to the next regular session of the court. If no such person files a declaration as aforesaid, the court may determine the cause upon whatever evidence it may have before it, and if there is no evidence the cause may be stricken from the docket, with or without leave to reinstate, in the discretion of the court.

ORDER OF THE COURT.

It is hereby ordered that the above and foregoing rules be and the same are hereby adopted as the rules of the Court of Claims of the State of Illinois.

Entered this 10th day of November, A. D. 1926.

A. J. CLARITY, *Chief Justice.*
WILLIAM L. LEECH, *Judge.*
B. F. THOMAS, *Judge.*

COURT OF CLAIMS LAW

AN ACT *to create the Court of Claims and to prescribe its power and duties. (Approved June 25, 1917. L. 1917, p. 325.)*

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* The Court of Claims is hereby created. It shall consist of a chief justice and two judges, appointed by the Governor by and with the advice and consent of the Senate. In any case of vacancy in such office during the recess of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, when he shall nominate some person to fill such office; and any person so nominated who is confirmed by the Senate, shall hold his office during the remainder of the term and until his successor is appointed and qualified. If the Senate is not in session at the time this act takes effect, the Governor shall make a temporary appointment as in case of a vacancy.

§ 2. The term of office of the chief justice and of each judge shall be from the time of his appointment until the second Monday in January next succeeding the election of a Governor, and until his successor is appointed and qualified. This provision in reference to the term of office of the chief justice and of each judge shall apply to the current terms of said offices and the respective terms of the present incumbents shall be deemed to have begun upon the appointment of said incumbents. (As amended by act approved and in force May 11, 1927. L. 1927, p. 393.)

EMERGENCY § 3. WHEREAS, in order that the full salary of said chief justice and of said judges as provided for by act of the 54th General Assembly may be paid out of an appropriation made and now available therefor; therefore an emergency exists and this act shall take effect and be in force and effect from and after its passage and approval. (Act approved May 11, 1927. L. 1927, p. 393.)

§ 3. Before entering upon the duties of the office the chief justice and each judge shall take and subscribe the constitutional oath of office, which shall be filed in the office of the Secretary of State.

§ 4. The chief justice and each justice shall each receive a salary of thirty-six hundred dollars per annum, payable in equal monthly installments. (As amended by act approved June 30, 1925. L. 1925, p. 329.)

§ 5. The Secretary of State shall be *ex officio* secretary of the Court of Claims. He shall provide the court with a suitable place in the capitol building in which to transact its business.

§ 6. The Court of Claims shall have power:

(1) To make rules and orders, not inconsistent with law, for carrying out the duties imposed upon it by law;

(2) To make rules governing the practice and procedure before the court, which shall be as simple, expeditious and inexpensive as reasonably may be;

(3) To compel the attendance of witnesses before it, or before any notary public or any commissioner appointed by it, and the production of any books, records, papers or documents that may be material or relevant as evidence in any matter pending before it;

(4) To hear and determine all claims and demands, legal and equitable, liquidated and unliquidated, *ex contractu* and *ex delicto*, which the State, as a sovereign commonwealth, should, in equity and good conscience discharge and pay;

(5) To hear and give its opinion on any controverted questions of claims or demand referred to it by any officer, department, institution, board, arm or agency of the state government and to report its findings and conclusions to the authority by which it was transmitted for its guidance and action;

(6) To hear and determine the liability of the state for accidental injuries or death suffered in the course of employment by any employee of the state, such determination to be made in accordance with the rules prescribed in the act commonly called the "Workmen's Compensation Act," the Industrial Commission being hereby relieved of any duty relative thereto.

§ 7. In case any person refuses to comply with any subpoena issued in the name of the chief justice, attested by the Secretary of State, with the seal of the state attached, and served upon the person named therein as a summons at common law is served, the circuit court of the proper county, on application of the secretary of the court, shall compel obedience by attachment proceedings, as for contempt, as in a case of a disobedience of the requirements of a subpoena from such court on a refusal to testify therein.

§ 8. The concurrence of two members of the court shall be necessary to the decision of any case.

§ 9. The court shall file a brief written statement of the reasons for its determination in each case. In case the court shall allow a claim, or any part thereof, which it has the power to hear and determine, it shall make and file an award in favor of the claimant finding the amount due from the State of Illinois. Annually the secretary of the court shall compile and publish the opinions of the court.

§ 10. Every claim against the state, cognizable by the Court of Claims shall be forever barred unless the claim is filed with the secretary of the court within five years after the claim first accrues, saving to infants, idiots, lunatics, insane persons and persons under disability at the time the claim accrued two years from the time the disability is removed.

§ 11. The Attorney General shall appear for and represent the interests of the State in all matters before the court.

§ 12. All claims now pending in the Court of Claims created under "An Act to create the Court of Claims and prescribe its powers and duties," approved May 16, 1903, in force July 1, 1903, shall be heard and determined by the Court of Claims created by this act in accordance with the provisions hereof.

§ 13. The jurisdiction conferred upon the Court of Claims by this Act shall be exclusive. No appropriation shall hereafter be made by the General Assembly to pay any claim or demand, over which the Court of Claims is herein given jurisdiction, unless an award therefor shall have been made by the Court of Claims.

§ 14. Repeal. (Smith-Hurd, p. 909.)

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CASES ARGUED AND DETERMINED IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

(No. 95—Claimant awarded $289.30)

THE IMPORTERS & EXPORTERS INSURANCE COMPANY OF NEW YORK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 18, 1923.

PRIVILEGE TAX—*mistake of fact—when refund may be made.* Where the tax is paid and through an oversight claimant failed to make proper deductions or procure proper credits it is entitled to a refund of the amount of the tax over paid.

THE IMPORTERS & EXPORTERS INSURANCE COMPANY OF NEW YORK, for claimant.

EDWARD J. BRUNDAGE, Attorney General; FLOYD E. BRITTON, Assistant Attorney General, for respondent.

MR. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant, Importers & Exporters Insurance Company of New York, doing business in this State, filed with the Department of Trade and Commerce its annual report of premiums collected in this State during the calendar year 1920, as provided by statute.

Pursuant to this report, the Department of Trade and Commerce assessed a privilege tax of $289.30 and allowed no deduction therefrom on account of "Fire Department Taxes" paid in 1920 in Chicago, to-wit: $804.52. The claimant was entitled in law to have the deduction of the $289.30, but neglected to take credit for that sum as it might have done.

It therefore claims that the failure to deduct the same was a mistake of fact and that it is entitled to refund of the $289.30 Privilege Tax so overpaid.

The tax receipt from the City of Chicago dated June 21, 1920, for the taxes imposed under the city ordinance then in force, to-wit: $804.52, is submitted in evidence with other evi-

dence supporting the contention and declaration of claimant. There is no dispute as to claimant's right to have had or to have taken credit for the said Privilege Tax at proper time, and no dispute as to the sufficiency of the evidence of the facts; but the defendant insists that said tax was voluntarily paid without protest and that claimant is therefore not entitled to refund of the $289.30, and cites numerous authorities in support thereof.

The claimant contends that by oversight it neglected, as a matter of fact, to procure a proper credit for the said Privilege Tax, as it might under the law have done, and that in consequence thereof it is entitled to a refund as aforesaid.

The claimant cites a case in point in support of its contention, the case of *The Firemen's Insurance Company* v. *State*, 2 Court of Claims, page 220, wherein the court in a parallel case held that "money paid under a mistake of fact may be recovered back, but not so if paid under a misapprehension as to what the law really is." In this same case the court held that failure to have the proper deduction made in the payment of its taxes was clearly a mistake of fact, caused by forgetfulness, and that the claimant therein was entitled to an award for the amount over paid and claimed as refund.

We have considered all the law cited by the counsel of the respective parties, and without attempting to enter into an elaborate discussion of the law, we are of the opinion that the over payment in the case at bar was a mistake of fact and that the claimant is entitled to an award for the amount claimed. And we further find that said claim is equitable and that in equity and good conscience it should be paid. We accordingly award the claimant the sum of $289.30.

(No. 29—Claim denied.)

RALPH H. TUTTLE, BY GEORGE TUTTLE, HIS FATHER AND NEXT FRIEND, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1924.

RESPONDEAT SUPERIOR—*when State not liable.* The State is not liable for the negligence of its employees.

GOVERNMENTAL FUNCTION—*hard road—construction of.* The State in the construction of its Hard Roads exercises a governmental function and is not liable for the negligence or torts of its employees in its construction.

HARLINGTON WOOD AND MILES GRAY, for claimant.

EDWARD J. BRUNDAGE, Attorney General; FLOYD E. BRITTON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought for personal injuries sustained by claimant while riding in an automobile on July 18, 1922, on what is known as the Peoria Road north of Springfield. It appears from the declaration of claimant that while he was riding in the car driven by another person, the car collided with a concrete mixer and barricade forming an obstruction over a portion of the highway while a bridge was being repaired by the agents of the defendant.

The claimant sets up and offers evidence to sustain such contention that they were driving along said road at a moderate speed; that the lights on their car were dimmed and in consequence before they struck the obstacles they were unable to observe same on account of the failure of the defendants' agents to maintain lights on such obstruction.

The defendant coming into court alleges that there were lights burning and offers evidence to sustain such contention.

The defendant also comes and files demurrer setting up in such demurrer the following contentions:

First: That the doctrine of *respondeat superior* is not applicable to the State;

Second: That in the absence of statute, the State is not liable for the torts of its officers, agents or employees;

Third: That in constructing, owning, maintaining and operating the concrete mixer complained of, the State was and is exercising a governmental function and is not liable for the torts of its agents in that behalf.

It is the opinion of the court that the demurrer should be sustained as we believe that as the law now stands there can be no construction placed upon our laws that would cause the court to consider this action as a legal liability.

It is however urged by the claimant that the doctrine of equity and good conscience should be applied. It is the opinion of this court that this rule should not be invoked in this particular case because in the first instance it does not appear to the court that the legislature intended to have it so considered. As a matter of fact if the legislature intended that this court should be the medium through which the State becomes liable, for this class of cases, then the legislature should so specifically state. It is the opinion of the court that it is without the province of this court to indulge in presumptions. The court is aware of the fact the State has now under way a great hard road building program through which a great multitude of actions, will naturally arise through personal injuries and otherwise. Of this situation the legislature was fully advised. Yet no law was made by that body to alter, vary or contradict the principles announced and set forth in the demurrer filed herein by the defendant.

It is further the opinion of the court that there is a matter of controversy as disclosed by the evidence filed herein as to whether or not the proper care was exercised by the claimant or the driver. It would seem to the court that the car must have been driven at a rather violent speed to run 150 feet after striking such a heavy obstacle as the cement mixer and barricade. Of course the mixer might have been near the embankment, yet it would seem that it would require considerable impact to have turned it as the evidence disclosed.

Therefore for the reasons stated this court is of the opinion that the State is not liable either as a matter of law or under the rule of equity and social justice. The claim is therefore disallowed.

(No. 649—Claimant awarded $25.00)

ATLAS MILLS (CORP.), Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1924.

PURE FOOD ACT—*when moneys paid under may be refunded.* When moneys have been paid to the State, that claimant was not required by law to pay, a refund of the amount paid will be awarded.

ATLAS MILLS, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed by the Atlas Mills, claimant, against the State of Illinois, setting forth that the Atlas Mills has paid into the state treasury of the State of Illinois through the Department of Agriculture the sum of $25.00 under the erroneous impression that said claimant was obliged to make this payment under the Pure Food Law; that under the laws of the State of Illinois said claimant was not obliged to pay said amount for the reason that the commodities sold by said Atlas Mills, claimant, was a pure wheat middling and that no amount was required to be paid by the claimant to the State.

The Department of Agriculture admits that the above payment was made and that the same was turned over to the State Treasurer.

The Attorney General filed a statement consenting to an award of $25.00.

The court therefore awards the claimant the sum of $25.00.

(No. 737—Claimant awarded $2208.39 with interest.)

W. H. CLAYBERG, ADM. OF THE ESTATE OF ALBERT B. TOMPKINS, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1924.

INHERITANCE TAX—where an estate has been appraised and the tax assessed, and is paid, and deductions allowable were not made before the tax was assessed, and upon a petition to reopen the case and a hearing thereon the deductions were made and the tax reassessed and reduced: *Held.* Claimant entitled to a refund of the difference between the amount of the tax paid and the amount found due upon the reassessment of the tax.

J. E. HOUSTON and CHARLES C. CRAIG, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed by W. H. Clayberg, administrator of the estate of Albert B. Tompkins, deceased, late of the County

of Fulton, State of Illinois, who departed this life on the 20th day of December, A. D. 1918, intestate.

Letters of administration were issued to W. H. Clayberg in the County Court, in the County of Fulton, State of Illinois; that after the issuance of letters of administration the county judge of Fulton County, Illinois, appointed an appraiser to conduct an appraisement of all property, subject to appraisement, of said Albert B. Tompkins, deceased, under and pursuant to the statutes of the State of Illinois relating to the taxation of gifts, legacies, inheritances, transfers, appointments and interests in such cases, for the purpose of fixing the fair market value of the property subject to said appraisement.

That afterwards on, to-wit, the 13th day of June, 1919, the said appraiser filed his report with the county judge of Fulton County, Illinois, which said report was on the 16th day of June, A. D. 1919, duly confirmed and approved by the said county judge, and on the same day said county judge entered an order fixing the tax payable to the State of Illinois in said matter; that the property so appraised and the interests of the heirs of said decedent and the tax so fixed were as follows:

Upon the interest of Ethel Tompkins Clayberg, daughter of decedent, the valuation was $374,882.41 and the tax was $7,709.65.

Upon the interest of Nelle Tompkins Clayberg (now Nelle Tompkins Ross), daughter of decedent, the valuation was $374,882.41 and the tax was $7,097.64.

It appears to the court here that said county judge erroneously fixed the fair market value of the property at the sum aforesaid and the tax payable with respect thereto, that said administrator filed a petition to re-open the original hearing relative to said appraisement for the reason that certain deductions allowable, under the law, from the value of the gross estate had not been allowed by the appraiser or the said county judge, and that there were additional assets which should be added; that said county judge, after due consideration of said petition and the allegations therein contained, having found there were liabilities which should have been allowed against the gross estate, did re-open the original hearing and after a full hearing was had thereon before said county judge, the value of the property so appraisable in said estate, after the allowance of all property deductions from the

gross value thereof, and the tax payable with respect thereto were found to be as follows:

Upon the interest of Ethel Tompkins Clayberg, daughter of the decedent, the valuation was found to be $316,776.30 and the tax payable with respect thereto $5,935.33.

Upon the interest of Nelle Tompkins Clayberg (now Nelle Tompkins Ross), daughter of the decedent, the valuation was found to be $316,766.29, and the tax payable with respect thereto $5,935.33.

The court finds that said W. H. Clayberg, administrator as aforesaid, on, to-wit, the 4th and 14th day of June, respectively, A. D. 1919, and prior to the order of the county judge of Fulton County aforesaid, re-determining and re-assessing said tax, paid to the county treasurer of said Fulton County, Illinois, the amount of the tax levied by the order fixing the tax entered by said county judge (less the discount of 5% allowed by law for payment of said tax, within six months following the death of the decedent), which said payment was made by said administrator pursuant to the statute of the State of Illinois and for the said beneficiaries, Ethel Tompkins Clayberg and Nelle Tompkins Clayberg (now Nelle Tompkins Ross); which said payment was $13,485.53, being $6,742.77 for the account of Ethel Tompkins Clayberg, and $6,742.76 for the account of Nelle Tompkins Clayberg (now Nelle Tompkins Ross).

The county treasurer of said Fulton County admits the payments of the aforesaid amounts.

It appears that the legal amounts which should have been paid by said beneficiaries are as follows:

Ethel Tompkins Clayberg $5,638.57
Nelle Tompkins Clayberg (now Nelle Tompkins Ross) $5,638.57

It further appears to the court, under the evidence presented, that said beneficiaries each overpaid the county treasurer of Fulton County, Illinois, as follows:

Ethel Tompkins Clayberg $1,104.20
Nelle Tompkins Clayberg (now Nelle Tompkins Ross) $1,104.19

The Attorney General files a demurrer, which as a matter of law is sustained. The Attorney General, however, admits the facts in this case as they are alleged in the declaration filed herein and consents to an award in favor of the claimant in the sum of $2,208.39, with interest on said sum from June 14, 1919.

The claimant is therefore awarded the sum of $2,208.39 with interest.

(No. 744—Claimant awarded $45.21.)

MARYLAND ASSURANCE CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1924.

INSURANCE TAX—*when award for overpayment may be made.* There being no objection interposed by the State, the court may enter an award for a refund of an overpayment of the tax.

MARYLAND ASSURANCE CORPORATION, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for an overpayment made by the claimant to the Division of Insurance, Department of Trade and Commerce, for which a refund of $45.21 is claimed.

The defendant by the Attorney General, comes and states that the claim has been approved by the Director of the Department of Trade and Commerce, and consents to the allowance of the claim.

It is therefore recommended by the court that said claimant be allowed the sum of $45.21.

(No. 745—Claimant awarded $75.00.)

IRA A. ERWIN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1924.

FUNERAL DIRECTOR—*when claim of may be allowed—inmate of institution.* Where a funeral director furnishes casket, robe and embalms the body of an inmate of a state institution, the court as a matter of social justice and equity may enter an award to claimant for the amount of his claim for material furnished and services rendered.

IRA A. ERWIN, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the Court:

This is a claim filed by claimant, Ira A. Erwin, funeral director, of Pontiac, Illinois, for casket, box, embalming, robe, opening grave and transfer of the body of Jesse Jones.

There is absolutely no evidence before this court, except the sworn statement of claimant, as to material furnished or services rendered and we therefore accept the said statement as true and correct, although we do not know whether or not the deceased was an employee, ward of the State or what not.

The Attorney General of the State has filed a demurrer, which as a matter of law is sustained.

The Attorney General also files a statement and consents to an award which is as follows: "The Director of the Department of Public Welfare having made a report of his investigation of the facts set forth in the claim filed herein, showing said facts as alleged by the claimant in this case as they are alleged in the claim filed by the claimant herein and consents to an award in favor of the claimant in the sum of $75.00."

As a matter of equity and social justice we therefore allow the claim in the sum of $75.00.

(No. 604—Claim denied.)

LEONARD RYAN, A MINOR, BY JOHN S. RYAN, HIS FATHER AND NEXT FRIEND, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1924.

RESPONDEAT SUPERIOR—*when State not liable.* The State is not liable for the negligence of its agents, officers or employees in the absence of a statute.

BOARD OF EDUCATION—*not an agency of the State.* The Board of Education in the city of Chicago in conducting and maintaining the Carter Public School is not acting as an agent of the State.

SAME—*State not liable for negligence of municipal corporations.* The State is not liable for the negligence of the officers and agents of a municipal corporation.

JOHN A. BROWN, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought by Leonard Ryan, a minor, by John S. Ryan, his father and next friend. The claimant alleges that while he was attending the Carter Public School maintained by the State of Illinois in and through the Board

of Education of the City of Chicago, on the 5th day of June, 1918, a coping and ornament over the entrance to said school building fell upon said plaintiff on the said sidewalk and ground adjacent to said school, causing the right eye of the plaintiff to be jammed out of its socket, breaking his right leg, fractured and splintered from his knee to his ankle, and caused his right foot to be bruised and smashed, his right arm to be fractured, and his left arm was broken about five inches above the wrist, and that he was otherwise injured, maimed and disabled. It was further alleged that said coping was insecurely fastened.

The defendant by its Attorney General comes and files a demurrer, and for the special cause of demurrer defendant sets up:

First: That the doctrine of *respondeat superior* is not applicable to the State.

Second: That in the absence of statute the State is not liable for the torts of its officers, agents or employes.

Third: That the Board of Education of the City of Chicago, in owning, conducting and maintaining the building alleged to have been the cause of the injury complained of, was not at the time of alleged injury, nor is it now, acting as the agent of the State of Illinois.

Fourth: That the State of Illinois is not liable for the torts of the Board of Education of the City of Chicago; nor is it liable for the torts of any of the officers, agents or employes of the said Board of Education of the City of Chicago.

Fifth: That the State of Illinois did not through the Board of Education of the City of Chicago, or otherwise, at the time of the alleged injury, have possession, control or management of the said public school building, known as the Carter Public School, nor did it own, operate or maintain the same or any of its appurtenances; nor was it, the said defendant, under a duty, at the time of the alleged injury, to keep the said building or any part thereof in good and safe repair and condition.

Sixth: That if, as alleged in said declaration, the defendant owned, possessed, controlled, maintained or managed the said public school building, it, the said defendant, was, in so doing, exercising a governmental function and would not be liable for the torts of its officers, agents or employes.

This court realizes that the claimant was seriously and grievously injured and that his pain and discomfort, agony of mind and body cannot be measured by dollars, but it is the

opinion of this court that the State of Illinois is not legally liable and that this court is without jurisdiction under the Act of 1917 in making allowance of this case, and it is our belief that it was not the intention of the legislature to clothe this court with extraordinary power to obligate the people of the State of Illinois in this class of cases. The court has ruled that as a matter of equity and good conscience an allowance would be made for injuries sustained by employes in the course of their employment or wards of the state or others who are injured through negligence of employes in the various departments of the State, but if the court drifted further afield and assumed obligations of municipalities or divisions of the State, then it would be the opinion of this court, the State would be burdened with a multitude of obligations far beyond those considered by the legislature in the establishment of this court.

The court would therefore sustain the demurrer of the defendant and disallow the claim.

(No. 720—Claim denied.)

THOMAS D. FITZGERALD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1924.

NON-LIABILITY OF STATE—*forfeiture of appearance bond.* There can be no legal liability against the State to refund to a surety of moneys paid by him into court upon a forfeited recognizance.

SAME—*conviction of defendant no ground for refund.* The fact that the defendant was convicted and sentenced by the court creates no liability or obligation on behalf of the State to refund to his surety moneys paid by him into court upon the forfeiture of the appearance bond.

THOMAS D. FITZGERALD, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration in this case was filed by Thomas D. Fitzgerald, claimant, setting forth that he is a resident of Franklin Park, Cook County, Illinois; that Thomas J. Fitzgerald, son of the claimant, was arrested in the County of DuPage, Illinois, in the year of 1920 on charges of burglary and larceny, and that he was convicted, and that on the 13th day of November, A. D. 1920, was sentenced to the Illinois State

Reformatory; and that said defendant prayed an appeal from the Circuit Court of DuPage County, and that the defendant, Thomas J. Fitzgerald, did give a good and sufficient bond of One Thousand Dollars ($1000.00) to the People of the State of Illinois to secure his appearance from time to time at the said court, with the United States Fidelity and Guaranty Company as surety.

It further appears from the declaration filed herein that Thomas D. Fitzgerald, claimant, and father of said Thomas J. Fitzgerald, did at that time agree to idemnify the United States Fidelity and Guaranty Company and save it harmless from any loss it might sustain by virtue of becoming surety for his son, Thomas J. Fitzgerald; that in the circuit court of DuPage County, Illinois, on the 31st day of December, A. D. 1920, Thomas J. Fitzgerald was called three times and he failed to appear, and the bond was therefore declared to be forfeited; that on January 31, A. D. 1921, judgment was entered against Thomas J. Fitzgerald and the United States Fidelity and Guaranty Company in the amount of One Thousand Dollars ($1000.00), and execution was issued therefor; that Thomas D. Fitzgerald, father of Thomas J. Fitzgerald, by his agent, came and in open court, in the circuit court of DuPage County, Illinois, on the 3rd day of February, A. D. 1921, and did then and there satisfy the said judgment against said Thomas J. Fitzgerald and the United States Fidelity and Guaranty Company in the amount of $1000.00.

Thomas J. Fitzgerald, the accused and convicted, was apprehended in the year 1922, and on the 1st day of February, 1923, was taken from the county jail at Wheaton, Illinois, to the Illinois State Reformatory at Pontiac, Illinois, and there incarcerated until the 1st day of January, A. D. 1923.

The Attorney General of Illinois files a demurrer to the declaration herein filed, and as a matter of law said demurrer is sustained by the court.

The court therefore disallows the claim, as there is no legal liability against the State of Illinois.

(No. 728—Claimant awarded $120.90.)

AMERICAN BOTTLE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1924.

FRANCHISE TAX—*when award may be made.* There being no dispute as to the facts and law in this case the court recommends an allowance to claimant of the amount of its claim.

BROWN, GEDDES, SCHMETTAU & WILLIAMS, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for the payment of fees to the Secretary of State by the claimant corporation on the matter of franchise taxes amounting to $120.90. The Attorney General, coming into court, files a consent to an award stating that the Attorney General's office had investigated the facts in the case as they appear of record in the office of the Secretary of State and he represents to the court that from such investigation he finds the facts alleged in said claim and that the sum of $120.90 is now due the said claimant.

It is therefore recommended by the court that said claimant be allowed the sum of $120.90.

(No. 733—Claimant awarded $3,020.00.)

WOLFF MANUFACTURING CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1924.

FRANCHISE TAX—*tax paid under duress will be refunded.* Where the tax assessed is in excess of the amount legally due the State, and is paid under duress and protest, claimant is entitled to a refund for the amount of the excess paid.

MORAN, PALTZER & O'DONNELL, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed by the claimant corporation for moneys paid to the State under duress and protest as and for

its franchise tax for the year beginning July 1, 1922, in excess of the amount legally due to the State under the provisions of the General Corporation Act. The claimant alleges that the excess amount paid by them would amount to $3,020.00.

The Attorney General files his statement herein and admits the facts in this case as they are alleged in the declaration filed by the claimant in this court and consents to an award in favor of the claimant in the sum of $3,020.00.

It is therefore recommended by the court that said claimant be allowed the sum of $3,020.00.

(No. 752—Claimant awarded $232.00.)

GRINNELL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1924.

CONTRACT—*when State liable—supplies furnished.* **The State is liable for supplies furnished to the Department of Public Works and Buildings for the use of the Illinois State Reformatory.**

GRINNELL COMPANY, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed by Grinnell Company, Inc., in the sum of $232.00, for material sold and delivered by the claimant to the Department of Public Works and Buildings of the State of Illinois, and for the use of the Illinois State Reformatory at Pontiac, Illinois, a State institution under the supervision and control of the said State of Illinois.

This claim has been investigated by the superintendent of the Division of Purchases and Supplies, Department of Public Works and Buildings, of the State of Illinois, and has been approved by that official.

The Attorney General of Illinois consents to an award in this case in the sum of $232.00.

The court therefore awards the claimant the sum of $232.00 in settlement of this claim.

(No. 755—Claimant awarded $1020.00.)

CITY OF PONTIAC, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1924.

MUNICIPAL CORPORATION—*when claim in favor of may be allowed.* There being no dispute as to the facts in the case, and no objection made by the State, the court enters an award in favor of claimant for the amount of its claim.

ROBERT M. NIVEN, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed by the City of Pontiac, a municipal corporation, of the State of Illinois, in the sum of $1,020.00, due to said city from the State of Illinois, as a part of the cost of operating and maintaining a septic sewerage disposal plant located near the City of Pontiac and through which all of the sewage of the Illinois State Reformatory, a State institution, is disposed of.

The claim has been investigated and approved by the Department of Public Welfare. The Attorney General of the State of Illinois consents to an award in the above amount, from February 1, 1922, to June 30, 1923, at the rate of $60.00 per month.

The court therefore awards the claimant the sum of $1,020.00.

(No. 770—Claimant awarded $333.75.)

ST. JOSEPH'S HOSPITAL OF BELVIDERE, ILL., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1924.

SOCIAL JUSTICE AND EQUITY—*eleemosynary corporation—award may be made.* Where no objection is made by the State, and the circumstances of the case warrant it, the court may recommend an award upon the ground of social justice and equity.

ALEXANDER J. STROM, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought by St. Joseph's Hospital of Belvidere, Illinois, an eleemosynary corporation, organized under

the laws of the State of Illinois, for services rendered one Rev. Alfred Bruhn, who, together with members of his family, was brought to the hospital by a Dr. Hartman of Garden Prairie, Illinois. It appears that the said Alfred Bruhn was driving a Ford automobile on the Grant highway near the Village of Garden Prairie, located in Boone County, Illinois, on or about September 1, 1923. It further appears that an army truck under the control of the National Guard unit drove against the Ford automobile of the said Rev. Bruhn and caused the Rev. Bruhn and members of his family injuries which they sustained and that the accident was without fault of the Rev. Bruhn. After the Rev. Bruhn sustained the injuries he and his family were taken to the hospital, receiving care and treatment there, upon which this claim was based. It further appears that the claim has been referred to Adjutant General C. E. Black of Springfield, who referred it to the Attorney General of this State.

The Attorney General, coming into court and alleging that the claim had been thoroughly investigated under the direction of the adjutant general of the State of Illinois, and as the result of such investigation, states that the claim is just and entitled to compensation in the sum of $333.75.

It is therefore recommended by the court that said claimant be allowed the sum of $333.75.

(No. 780—Claimant awarded $101.00.)

W. D. DOYING, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1924.

SERVICES—*when State liable.* **The State is liable for services rendered for labor and material furnished for the repair of its linotype machines in the printing department of the Illinois School for the Deaf.**

W. D. DOYING, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant files his declaration herein setting forth that his claim is based upon labor performed and for material furnished in connection with the overhauling and repairing of a linotype machine in the printing department of the Illinois

School for the Deaf, in August, 1920, at Jacksonville, Illinois, the amount of the claim being for the sum of $101.00.

The Attorney General filed a statement herein consenting to the award, stating that the investigation made by his office shows that the facts as alleged in the declaration of the claimant are true and that the claimant is lawfully entitled to compensation for services rendered and materials furnished.

The court therefore allows the claim of $101.00.

(No. 782—Claimant awarded $167.38.)

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1924.

CONTRACT—*when State liable.* The State is liable for electric lights and water furnished in armory used by a company of the Illinois National Guard.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

This is a claim for electric light and water service furnished by the claimant while Company "E" Fifth Regiment Illinois Reserve Militia was stationed at Carbondale, Illinois, and occupying and using the Armory Hall in said city.

The Attorney General files a statement consenting to the award and that the claim has been thoroughly investigated and found to be true and correct, with the recommendation that an award be made.

The court therefore awards the claimant the sum of $167.38.

(No. 5.—Claim denied.)

GEORGE WOLFE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 16, 1924.

GOVERNMENTAL FUNCTION—*State not liable for injuries to inmates of institutions.* The State in conducting the Illinois State Reformatory exercises a governmental function and is not liable for injuries sustained by an inmate thereof.

SAME—*not liable for torts of officers.* The State is not liable for the torts of its officers or agents.

RULES OF COURT—*must be complied with.* Rule 5 of this Court must be complied with in all statements of claims against the State.

STATUTE OF LIMITATION—*when a defense.* The statute of limitations is a complete defense in this case.

BLANKSTEN & FREEMAN, *for claimant.*

EDWARD J. BRUNDAGE, Attorney General; FLOYD E. BRITTON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant in this case styles himself as "George Wolfe, petitioner," but in his declaration he signs and swears to it as "George J. Stone."

The declaration alleges that he was committed to the Illinois State Reformatory under the name of *George Wolfe;* and brings this suit for the recovery of $15,000.00 for alleged injuries sustained while an inmate of said State institution under circumstances as follows:

First: That on the 12th day of June, 1912, the second day of his arrival in said institution, the guard on duty at the doctor's office of said institution assaulted claimant with a deadly weapon, being a "black-jack" or billy, with which he struck him, claimant, across the forehead, knocking him unconscious.

Second: That on or about September 12, 1912, he was again assaulted and beaten by a teacher in the school of said institution.

Third: That about May, 1913, he was again assaulted and beaten about the face by a guard on duty in the paint shop of said institution.

Fourth: In August, 1913, with "rubber squeegee" about his hands and arms by a guard on duty at the cell house.

Fifth: That he suffered other wrongs and injuries not mentioned.

That all of said injuries were sustained during the first eighteen months of his stay at said institution.

That, as a result of such injuries he suffered impaired health, causing insomnia, instability, anemia, depression, amnesia, general debility, frequent inability to continue at his occupation; that these troubles existed after his release on parole from said institution on June 29, 1915, and continued after he was drafted into the army, where he was placed in modified service, etc.

He was discharged in 1919, and up to the time of filing his claim in 1921, his mind was such that he had no knowledge of how to secure or prosecute a claim for redress of said wrongs, etc.

He files his claim in the sum of Fifteen Thousand Dollars.

The defendant, State of Illinois, demurrs and pleads the Statute of Limitations.

The declaration is a rather vague, loose, disconnected statement of what purports to be the facts, upon which claimant bases his claim, and covering a period of some two or three years. He was eventually paroled some time in 1915, and later was drafted into U. S. service in the "World's War," and discharged therefrom in 1919, he says.

The declaration alleges that during all the time between the time he claims he was first assaulted and the date of filing suit, he was not, in consequence of such injuries so received, mentally capable of bringing a suit or knowing what his rights really were.

There is no evidence on file to support his sworn statement, but, assuming that the facts are true as alleged, the claimant in our opinion is not entitled to the relief claimed. The cause of action, if any he had, had occurred nearly ten years prior to the filing of the suit in 1921, thus making the claim an unusually stale one.

Claimant has not complied with the rules of the court in his declaration. Rule 5 requires that he shall state in his declaration whether his claim has been presented to any State department or State officer, or to any person, corporation or tribunal, etc.

It is always important that Rule 5 should be complied with in all statements of claims.

The entire circumstances and statement of the case, in connection with its staleness is not very satisfactory, and not looked upon with favor by the court. This court has repeat-

edly held that the State is not liable for the torts of its officers or agents, and the rule applies in this case.

While the claimant presents a statement that elicits the sympathy of the court, yet in view of the foregoing conclusions reached by the court, the demurrer will be sustained; while the plea of the Statute of Limitations, properly pleaded, is sustained, the suit is accordingly dismissed.

(No. 709—Claim denied.)

MARY O'BRIEN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 16, 1924.

STATUTE OF LIMITATIONS—*when a defense.* Claimant must file his claim within a reasonable time in order that the tax payers may have notice of whatever liability, if any, exists against them.

MUNICIPAL CORPORATION—*State not liable for negligence of.* The State is not liable for an injury sustained by claimant who by reason of an accumulation of ice and snow upon a sidewalk, fell and was injured—the sidewalk being under the control of a municipal corporation.

SAME—*social justice and equity—when court without jurisdiction.* In a claim of such character the Court of Claims Act does not confer jurisdiction upon the Court to allow it under the rule of social justice and equity.

Goss & ROONEY, for claimant.

EDWARD J. BRUNDAGE, Attorney General; FLOYD E. BRITTON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed on account of alleged injury of the claimant, who slipped and fell on an accumulation of ice and snow upon the sidewalk at a point along West Jackson boulevard in Chicago, Illinois, on the 19th day of January, 1918.

It appears that claimant instituted her suit for damages in the Circuit Court of Cook County; that said suit was dismissed on the ground that said sidewalk was under the control of the West Park Commissioners.

The claimant filed this claim on June 30, 1922, and it has been urged by the State that a great deal of time has elapsed before the claim was filed in this court, setting up as a contention the position of this court as heretofore taken that demands against the State should be filed within a reasonable time so that the taxpayers may know whatever liability may be determined against them at the earliest possible moment.

It is the opinion of this court that independent of the question of the Statute of Limitations, that as a matter of law, the demurrer of the defendant should be sustained and therefore the same is sustained.

The court is further of the opinion that it has not been heretofore the practice of this court to make an allowance in a case of this character on the ground of equity or social justice, and it is further the opinion of the court that under the Act creating it, it was not intended that the court would have the power to make awards in a case of this character, and as it has been held heretofore by this court that in taking jurisdiction of these classes of cases it would open up the way of an endless number of claims and place an obligation upon the State and the taxpayers that in the mind of this court was not intended by the legislature in the Act that brought the court into being.

Therefore, for the reasons stated, this court is of the opinion that the State is not liable either as a matter of law or under the rule of equity and social justice. The claim is therefore disallowed.

(No. 759—Claimant awarded $498.22.)

PEOPLES BANK & TRUST COMPANY OF ROCKFORD, ILLINOIS, EXECUTOR ESTATE OF SARAH WINN, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1924.

INHERITANCE TAX—*when claimant entitled to refund—Sec. 10.* There being no dispute as to the facts, and no objection by the State, the court will enter an award in favor of claimant.

EARLY & EARLY, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The Peoples Bank and Trust Company of Rockford, Illinois, a corporation, was duly appointed executor under the last will and testament of Sarah Ann Winn, who died testate in Winnebago county, Illinois, November 28, A. D. 1919. The entry of an order was made in due time and assessing the inheritance tax, which was paid by the executor.

Later on, a re-hearing was shown by the records and other evidence that the executor had paid the State an excess on said taxes to the amount of $498.22, and an order made by the court ordering a refund of said sum erroneously paid.

The Attorney General in writing consents to this and a claim of $498.22 is accordingly awarded claimant.

(No. 760—Claimant awarded $8,564.08 with interest.)

LIBBY B. HILL *et al.*, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 16, 1924.

INHERITANCE TAX—*when refund will be made. Sec. 25.* Where an inheritance tax is assessed under Sec. 25, Inheritance Tax Law, and is paid, and afterwards certain contingencies mentioned in the will become extinguished and the estate becomes vested in the devisee, and the court in a proper proceeding reassessed and fixed the tax upon all succession under the will: *Held*—claimants are entitled to a refund of the difference between the amount of the tax paid on the original assessment and the amount fixed on the reassessment of the tax with interest at 3%.

MAYER, MEYER, AUSTRIAN & PLATT, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The petitioners, Libby B. Hill, Watson B. Hill and Jean Patterson Hill, who are respectively the widow, son and daughter of Watson Hill, late of Cook county, Illinois, deceased, represent that said Watson Hill died a resident of Chicago in said Cook county, May 17, 1913, leaving a last will and testament, dated April 27, 1910, and a codicil thereto dated February 6, 1912, which were duly admitted to probate in said county of Cook June 27, 1913; that in and by said will the Northern Trust Company was appointed executor thereof, and said estate was by him duly administered, declared settled and the executor discharged March 12, 1915.

On October 30, 1913, the county court fixed the total inheritance taxes upon all successions under said will at the aggregate sum of fourteen thousand two hundred forty-five dollars and seventy-eight cents ($14,245.78), pursuant to which order the executor paid the county treasurer of said county the sum of thirteen thousand five hundred thirty-

three and 49/100 dollars ($13,533.49) being the amount so found due after the deduction of the statutory 5%.

By the 36th clause in his said will the testator directed that in the event all the aforesaid petitioners should die before the expiration of the term of ten years after his death, leaving no issue of a deceased child of his living at the time of the death of the last survivor of said petitioner, then and in that event the residue of the trust estate should be divided, transferred and delivered as follows: one-fourth to the testator's sister, Emily Hill; if she were not living then to her heirs at law; one-fourth thereof to testator's niece, Mattie H. Wright, and if she were not living then to her heirs at law; one-fourth thereof to Jennie S. Walts, sister of the petitioner, Libby B. Hill, and if said Jenny S. Walts were not living, then to her heirs at law and the remaining one-fourth to DePauw university of Greencastle, Indiana.

This was all that part of the will that is material in the issues of this case. That in fixing and assessing the inheritance taxes at the said sum of $14,245.78 one-half of the remainder of the entire estate of the deceased, subject to certain equitable estates by said will devised for the term of ten years after the death of said decedent, was taxed at the rate of 4 per cent and the other half of such remainder was taxed at the rate of 6 per cent, by reason of the aforesaid contingent devices made under the 36th clause of said will and pursuant to the provisions of section 25 of the Inheritance Tax Laws of this State in force July 1, 1909, and at the highest possible rate thereunder, upon the assumption that the contingency specified in the 36th clause would occur, namely that the petitioners would all die before the expiration of the term of ten years after the death of the testator leaving no issue of a deceased child of the testator living at the time of the death of the last survivor of the three petitioners. The petitioners aforesaid did and have survived beyond the term of ten years after the death of the testator, hence all the aforesaid contingencies mentioned in said clause 36, contemplated in and by the original appraisement and assessment of inheritance taxes herein have become and are now extinguished; and under said clause 36 in the will, wherein certain estates were subject only to the life estate of said Emily Hill in a certain parcel of real estate therein described, and on May 17, 1923, each of the three petitioners became and are now

seized and possessed of the one-third part of the residuary estate of the testator, and are entitled to enjoy the same free from any contingency.

On October 3, 1923, the county court of Cook county, with the consent and approval of the Attorney General of this State, re-assessed and fixed the total inheritance taxes upon all the successions under the said will at the aggregate sum of $5,230.96.

From the evidence on file the three petitioners, Libby B. Hill, Watson B. Hill and Jean Patterson Hill, are entitled to a refund of $8,564.08, on computation as follows:

Original tax	$14,245.78
Less 5% statutory discount	712.29
Net tax	$13,533.49
On re-assessment less 5%	$ 4,969.41
Amount of refund due petitioners	$ 8,564.08

Accordingly an award is made to said petitioner in said sum of $8,564.08, with 3 per cent interest per annum from November 10, A. D. 1913.

(No. 771—Claimant awarded $3,673.15.)

DONALD S. BOYNTON *et al.*, EXECUTORS OF THE ESTATE OF CHARLES T. BOYNTON, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 16, 1924.

INHERITANCE TAX—*when refund may be made—modification of order.* Where an inheritance tax has been assessed and is paid, and afterwards upon proper proceeding, the county court modifies its order and allows a deduction of the amount of a claim against the estate, which through an oversight or inadvertence, was not taken into consideration in the original assessment of the tax, claimant will be entitled to a refund of the difference between the amount of the tax paid under the original order and the amount found due under the order of the court as modified.

EVERETT L. MILLARD, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

Charles T. Boynton of Lake County, Illinois, died February 27, 1923, leaving a last will and testament, and

claimants were appointed and qualified executors of said will and testament.

In August, 1923, the county judge of Lake County entered an order fixing the inheritance tax in said estate at $32,045.04 and the same was paid. This was based upon a valuation of the estate at $1,006,065.85, and the total deductions were found to be $262,025.73, leaving a fair value of the appraisable property to be $744,040.12, and an order was entered fixing the tax at said last named sum. At the time of the death of deceased he was guarantor on a demand note of $85,000.00 executed by C. D. Caldwell, payable to the order of the Continental and Commercial Trust and Savings Bank of Chicago, dated January 24, 1921. That $42,500.00 of said note was a primary liability of the decedent, which was paid in due course of administration by claimants, but by inadvertence was not taken into consideration when credits or charges against the estate were deducted as heretofore stated. A petition was later filed by the claimants in the county court showing the facts and the original order was modified ordering a deduction of the last named amount, and a total tax of $28,371.89 in place of the tax as originally fixed. This makes an over-payment by claimants of $3,673.15 which claimants contend should be refunded to them. The Attorney General states that he has investigated the facts and evidence, finds them to be true and consents to an award for the amount claimed. From the statement of the facts, supported by proper evidence and consent of the Attorney General, the court awards the sum of $3,673.15 payable to the claimants.

(No. 778—Claimant awarded $915.20 with interest.)

ANNA M. MORRIS, EXECUTRIX OF THE ESTATE OF LEWIS MORRIS, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 16, 1924.

INHERITANCE TAX—*when claimant entitled to refund. Sec. 25.* Where an inheritance tax has been assessed, and paid, under Section 25, Inheritance Tax Law, and upon the extinguishment of all contingencies and conditions contemplated in the original appraisement and assessment of the tax, the tax is re-assessed, claimant is entitled to a refund of the difference between the amount of the tax originally assessed and the amount of the tax found to be due upon the re-assessment, with interest at 3%.

JULIUS STERN, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

Claimants, Lottie Nath, Rose Nath Dresser, Kathryn Nath Greenblatt and Bernard Nath, petition for a refund of $915.20 with interest thereon at the rate of 3% per annum from the 24th day of May, 1921, and represent to the court that Louis Nath, a resident of Cook County, Illinois, died in Chicago on November 27, 1920, leaving a last will and testament which was duly admitted to probate January 3, 1921.

After providing for the payment of his debts, said decedent in and by second clause of his will devised and bequeathed unto Foreman Bros. Banking Company, a corporation of Illinois, all the rest, residue and remainder of his estate in trust to hold and control the same upon certain trusts, purposes and conditions as in said will set forth; and in and by the tenth clause of the said will the testator provided that when his youngest surviving child should reach the age of twenty-five years the trust should terminate and the trustee should distribute all the property then in its hands and not previously paid or distributed to his widow, Lottie Nath, or to certain legatees as provided in said will, to Kathryn Greenblatt, Rose Nath (now Rose Nath Dresser) and Bernard Nath in equal parts, share and share alike. Lottie Nath is the widow and Kathryn Nath Greenblatt, Rose Nath Dresser and Bernard Nath are respectively the daughters and son of the decedent.

On April 19th, 1921, an order of record was made by the judge of the county court, based on the appraisement, fixing

the cash value of the successions, interests, estates, legacies, transfers, gifts and property which the parties interested under the will were entitled to receive by reason of the death of the said decedent, and fixed the amount of tax to which same was liable at the total sum of $2,199.13.

Pursuant to said order fixing the amount of the inheritance tax, Foreman Bros. Banking Company, as executor of the said last will of said Louis Nath, deceased, paid to the county treasurer the sum of $21,088.18, being the amount in full of such taxes after deduction of the statutory 5% discount, and on March 27, 1922, final report was made by the executor, the estate declared closed and the executor discharged.

On February 23, 1923, Bernard Nath, the youngest surviving child of the testator became 25 years of age; and on that date the said claimants, Rose Nath Dresser, Kathryn Nath Greenblatt and Bernard Nath, became and now are each seized and possessed of an equal undivided one-third (1/3) part of the residue of the said trust estate and entitled to enjoy the same free from any contingencies whatever, and subject only to the dower interest of the widow, Lottie Nath.

By reason of the survival of the petitioners (the claimants) beyond the date when Bernard Nath reached the age of 25 years; and by reason of the termination of the said trust and the extinguishment of all contingencies and conditions contemplated in and by the original appraisement and assessment of inheritance taxes, the said claimants under and by virtue of said Section 25 of the Revenue Act became and were entitled to a reassessment of the inheritance taxes assessed against the various persons taking under the said will; and thereupon the 25th day of March, 1924, by proper order reassessing all inheritance taxes in said estate, which reduced the tax to 1,235.77.

By reason of such entry of said last order, the amount of said inheritance taxes which should be paid is $1235.77, less 5%, the statutory discount, making a total sum which properly should be paid of $1173.98.

The original amount of inheritance paid to the county treasurer as aforesaid was $2089.18. This leaves due claimant the sum of $915.20 with interest as claimed.

It is therefore ordered that the claimant recover from the defendant, State of Illinois, the said sum of $915.20 with 3% interest thereon per annum from the 24th day of May, A. D. 1921.

(No. 783—Claimant awarded $350.15.)

ANNA M. MORRIS, EXECUTRIX ESTATE OF LEWIS MORRIS, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 16, 1924.

INHERITANCE TAX—*when claimant entitled to refund.* Where an inheritance tax has been fixed, and paid, and an appeal is taken from the order of the county judge and upon a hearing thereon the tax is re-assessed and reduced, claimant is entitled to a refund of the difference between the amount of the tax paid and the amount found due upon the re-assessment on appeal.

JULIUS STERN, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant, Anna M. Morris, executrix of last will and testament of Louis Morris, deceased, on petition to county judge of Cook County, had the inheritance tax fixed, amounting to $3215.59, less the usual statutory 5% discount, allowed, making a net tax of $3054.81, which she paid to the State.

An appeal was regularly presented from such order to the county court, which upon a hearing, re-assessed and fixed amount to be paid to be $2847.01, less 5%, leaving $2704.66, which findings show that claimant erroneously paid to the defendant $350.15, which amount the Attorney General admits is just and should be refunded.

The court accordingly awards claimant the sum of $350.15.

(No. 789—Claimant awarded $2,009.49 with interest.)

CONTINENTAL TRUST AND SAVINGS BANK, EXECUTOR OF THE LAST WILL AND TESTAMENT OF MARGARET TRUE BLAND, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 16, 1924.

INHERITANCE TAX—*when refund awarded.* When an inheritance tax has been assessed and paid, and an appeal is taken to the county court, and upon a hearing thereon, the tax is reassessed and reduced, claimant is entitled a refund of the difference between the amount of the tax paid, and the amount found due upon appeal.

ROBERT D. ELDER, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This is a claim for refund of inheritance taxes. The claimant, the Continental and Commercial Trust and Savings

Bank, a corporation of the State of Illinois, was duly appointed executor of the estate of Margaret True, who died testate October 29, 1919, and her will was admitted to probate in the Probate Court of Cook County, Illinois, December 15, 1919.

On 24th day of April, 1920, an order was entered fixing the inheritance tax at $40,088.84, which was paid by the executor, less a discount of 6%, to-wit, the sum of $2004.44, leaving a net payment of $38,084.40 so paid.

On May 10th, 1920, a petition was filed in the county court praying an appeal from the final order fixing tax above set forth. A hearing was had thereon March 26, 1924, and terminated in the county court entering an order fixing the tax at $37,973.59 and that 5% should be deducted therefrom so that the net amount of tax going to the State would be $36,-074.91.

The claimant therefore claims the difference between the said amount of $38,084.40 so paid and the sum of $36,074.91, to-wit, $2009.49, with 3% interest per annum thereon from April 27, 1920.

All the necessary proof in support of said claim is produced and the Attorney General states that he has duly investigated the claim and consents to its allowance.

The court accordingly awards the claimant the sum of $2,009.49 with interest to be computed thereon from April 27, 1920.

(No. 803—Claimant awarded $175.00.)

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 16, 1924.

CONTRACT—*when State liable—switching cars.* The State is liable under its contract for switching cars to its State Institutions, although the funds for such purposes are exhausted.

FRED L. SHIMER, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

MR. JUSTICE PHILLIPS delivered the opinion of the court:

The Central Illinois Public Service Company, a corporation, under the laws of Illinois, prosecutes this claim for a

recovery of $175.00 alleged to be due it for services performed by it for the State.

The facts, as disclosed by the evidence, show that during the months of October and November, 1918, claimant switched certain cars from the Illinois Central R. R. track at Anna, Illinois, to the Anna State Hospital, in accordance with a written contract with the State, which contract is on file in evidence in this cause, and that the claimant's total claim for said service is $175.00. The funds of the Anna hospital for such purposes were exhausted and no funds were available to pay same, nor for any bills of like character prior to 1921.

C. H. Anderson has O.K.'d the bill and the Attorney General recommends its allowance as claimed. The evidence sustains the claim and claimant is accordingly awarded the said sum of $175.00.

(No. 804—Claimant awarded $203.46 with interest.)

FIRST TRUST & SAVINGS BANK AS EXECUTOR AND TRUSTEE UNDER THE LAST WILL AND TESTAMENT OF ANTHONY H. REED, Deceased Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 16, 1924.

INHERITANCE TAX—*when refund may be awarded—Sec. 25.* Where an inheritance tax has been assessed against an estate at the highest rate possible under Sec. 25, Inheritance Tax Law, and is paid, and afterwards a contingency happens whereby the estate is transferred to persons taxable at a less rate, and upon a petition being filed praying for the re-assessment of the tax it appeared that the state was not subject to a tax: *Held*, claimant entitled to a refund of the tax paid.

MOSES, ROSENTHAL & KENNEDY, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

First Trust & Savings Bank, a corporation of Chicago, Illinois, as executor and trustee under the last will and testament of Anthony H. Reed, deceased, brings this suit for a refund of inheritance taxes, and alleges in its declaration that an inheritance tax was assessed against the said estate by the county court of Cook county, Illinois, in the sum of $185.92, that the said tax was assessed at the highest possible rate, in accordance with the provisions of Section 25 of the Illinois

Inheritance Tax act; that on May 20, 1920, claimant, as executor and trustee, paid to the county collector of said county the amount of said tax, together with interest at the rate of six (6) per cent per annum thereon, from the date of the death of said deceased to the date of payment, or a total of $203.46; that thereafter a contingency happened whereby the assets of said estate were transferred to persons taxable at a rate less than the rate imposed by the county court in arriving at the tax assessed as above indicated and set forth; that by reason of said contingency, the said estate became, and is subject to no inheritance tax.

On June 19, 1924, the claimant filed a petition in the county court aforesaid asking for a re-assessment of the tax in said estate, and an order was accordingly entered on said date, re-assessing the inheritance tax in said estate, and finding the estate subject to no inheritance tax; that the following persons are entitled to such refund: Robert B. Reed, Ernest C. Reed, Elbert E. Reed, Hazel Robinson (formerly Hazel Reed) and Harold M. Reed, the children and heirs at law of said decedent, and beneficiaries of the trust created by the last will and testament of said decedent. It is clear from the reading of the copy of the will and testament filed, and the findings and orders of the county court of Cook county that the claimant is entitled a refund of amount claimed with interest as claimed.

The Attorney General filed demurrer, and also his consent in writing that claim be allowed as prayed for by claimant.

The court accordingly overrules demurrer and awards the claimant the sum of $203.46.

(No. 807—Claimant awarded $130.34 with interest.)

LILIAN C. EMERY, EXECUTRIX, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 16, 1924.

INHERITANCE TAX—*when refund may be made—Sec. 25.* Where an inheritance tax has been assessed under Section 25, Inheritance Tax Law, and is paid, and upon the happening of certain contingencies expressed in the will, a petition was filed praying for the re-assessment of the tax, and upon a hearing thereon the tax is assessed at a less rate, claimant is entitled to a refund of the difference between the amount of the tax paid and the amount found due upon the re-assessment.

SONNENSCHEIN, BERKSON, LAUTMANN & LEVINSON, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

MR. JUSTICE PHILLIPS delivered the opinion of the court:

This is for claim for refund of inheritance tax erroneously paid to the State of Illinois. William R. Emery died March 13, 1919, leaving a last will and testament with codicil thereto, which were admitted to probate in Cook County, Illinois.

The petitioner is the widow of said deceased. In an order duly entered of record by the county judge September 19, 1919, fixing amount of inheritance tax to be paid at $1304.20, being the amount less 5% discount allowed by statute, July 21, 1920, the estate was declared closed and executrix discharged.

On account of the happenings of certain contingencies expressed in the will, a copy of which is filed as evidence in the case, under Section 25 of Revenue act, the claimant became entitled to a re-assessment of the inheritance taxes. Thereupon June 17, 1924, the claimant filed her petition in said county court of Cook County, praying for a re-assessment in accordance with the statute in such case made and provided; and an order was made re-assessing said inheritance tax at $1235.64 less the 5% discount allowed by statute, which equaled $1173.86. The amount of tax actually paid therefore was $1304.20. It is therefore clear that the claimant is entitled to a refund of $130.34, with interest thereon from September 19, 1919, at 3% per annum.

The claimant is accordingly awarded the sum of $130.34 with 3% thereon per annum from September 19, 1919.

(No. 809—Claimant awarded $3,149.74 with interest.)

GUSTAVE C. STRAUSS, EXECUTOR OF THE ESTATE OF LOUIS STERN, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 16, 1925.

INHERITANCE TAX—*when claimant entitled to refund for overpayment.* Where it clearly appears that an inheritance tax has been erroneously assessed, and is paid, claimant will be entitled to a refund of the overpayment.

STEIN, MAYER & DAVID, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration in this case shows that the plaintiff, Gustave C. Strauss, executor in the estate of Louis Stern, deceased, a resident of Chicago, Cook County, Illinois, died testate, leaving a last will and testament dated the 27th day of October, 1921, that thereafter Gustave C. Strauss filed his petition in the probate court of Cook County, praying that the last will and testament of Louis Stern be admitted to probate and that letters testamentary in the estate of Louis Stern, deceased, be issued to the plaintiff, Gustave C. Strauss, that thereafter on March 14, 1922, the said last will and testament duly admitted to probate in the probate court of Cook County, Illinois, and letters testamentary were duly issued by said court to said plaintiff.

The plaintiff alleges that on or about January 24, 1922, the Honorable Edmund K. Jarecki, judge of the county court of Cook county, appointed an appraiser to conduct an appraisement and to assess and fix the fair market value of the property appraisable by reason of the death of said Louis Stern and to fix the tax thereon under the inheritance tax laws of the State of Illinois; that the appraiser afterwards came into court and presented his appraisement and an order was entered by said court finding that the fair market value of the estate or interest of Mathilda Stern, widow, be fixed at $40,147.36 and that the taxable cash value of said interest be assessed at $20,147.36, and that the inheritance tax for which said estate or interest of Mathilda Stern is liable, be fixed at $402.95, that the said order further finds that the fair market value of the estate or interest of Alfred Friedlich, growing out of the said estate of Louis Stern, deceased, be

assessed at $77,086.65 and the taxable cash value of said interest be assessed at $76,986.65, and that the inheritance tax for which said estate or interest of Alfred Friedlich is liable be fixed at $9,917.86 making a total amount of inheritance tax due the State of Illinois from said estate of Louis Stern of $10,320.81.

The plaintiff further avers that the sum of $10,320.81 fixed by the county court of Cook County as the inheritance taxes due the State of Illinois from the estate of Louis Stern, deceased, was and is erroneous in that the said tax was predicated upon the fact that the securities representing the sum of $26,740.00 as set forth in said declaration is a part of the estate of Louis Stern, deceased, that in truth and in fact was due the State of Illinois from the assets or interest growing out of the estate of Louis Stern, deceased, as inheritance taxes, only the sum of $7,171.07; that the payment by the plaintiff to the State of Illinois of the said sum of $10,320.81 was an erroneous over-payment of inheritance taxes to the State of Illinois to the extent of $3,149.74.

The Attorney General of the State of Illinois, in behalf of the State, files his consent in writing to an award and says that the claim as set forth in the declaration filed in this cause has been given thorough investigation by the Attorney General.

The Attorney General finds that the facts in this case are as alleged in said declaration.

The Attorney General further finds that the claimant is entitled to a refund in the sum of $3149.74 with interest thereon at the rate of 3% from May 21, 1923, and he accordingly hereby consents to an award in favor of the claimant for said sum.

It is therefore ordered by the court that said claimant be allowed an award in the sum of $3,149.74 with interest thereon at 3% from May 21, 1923.

(No. 22—Claimant awarded $30.50.)

BLAKE GROVER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 17, 1924.

SERVICES—*when claim for, allowed.* Where services have been faithfully performed, in good faith, under belief that compensation will be paid therefor, the court will enter an award in favor of claimant for such services.

BLAKE GROVER, for claimant.

EDWARD J. BRUNDAGE, Attorney General; FLOYD E. BRITTON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed to recover Thirty Dollars and Fifty Cents ($30.50) for services rendered to the State for issuing 122 crow foot bar licenses for the Division of Fish and Game of the Department of Agriculture of the State of Illinois, from November 21, 1920, until November 21, 1921, collecting from the several licenses the total sum of $305.00.

It appears from the record that the claimant received no compensation for this service, either directly on indirectly.

It is further, however, the opinion of the court that as a matter of law that the claimant could not recover, but it is the opinion of the court that the claimant performed the service faithfully and made return of the funds collected by him without making any deduction for his services, in good faith and with the belief that he would be compensated.

Therefore, it is the opinion of the court that under these circumstances and from evidence offered in open court that as a matter of equity and good conscience this claim should be allowed, and it is recommended that the claimant be allowed the sum of $30.50.

(No. 795—Claimant awarded $12.58.)

WORLD BOOK COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 17, 1924.

PAYMENT—*moneys paid by mistake of fact may be refunded.* Where moneys have been paid to a State Institution under a mistake of fact it may be refunded.

WORLD BOOK COMPANY, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed amounting to the sum of $12.58. The declaration shows that during July, 1923, the World Book Company received a remittance of $12.58 from the Illinois State Normal University, warrant number 39870, that the claimant had the impression that this amount was to be applied on the account of the University of Illinois, and that both institutions were one and the same.

The claimant discovered the error and wrote to the Illinois Normal University, Normal, Illinois, requesting that a duplicate be issued, that the president of said institution informed the claimant that since the order had been returned to the State Auditor instead of the university, another appropriation would have to be made from the school funds, which they could not afford.

The Attorney General filed a demurrer, which as a matter of law will be sustained by the court.

The Attorney General also filed his consent to an award stating that the Attorney General has made a thorough investigation into the merits of this claim, that it appears that in July, 1923, as a result of voucher issued by the official of the State Normal University, warrant number 39870 for the sum of $12.58 was issued to the claimant, that subsequently through a mistake in the office of the claimant, the said warrant was returned to the Auditor of Public Accounts.

Through error this amount was deposited to the Revenue funds of the State and said money is not now available for payment of this claim.

The Attorney General therefore consents to an award in this case in favor of the claimant in the sum of $12.58.

The Court therefore recommends an award in the sum of $12.58.

(No. 802—Claimant awarded $21,698.08.)

WASHINGTON PORTER II AND FREDERICK C. PORTER, EXECUTORS OF THE ESTATE OF WASHINGTON PORTER, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 17, 1924.

INHERITANCE TAX—*when refund for overpayment will be made.* Where an inheritance tax has been fixed by the county judge, and is paid, and an appeal is taken to the county court where upon hearing thereon the county court finds that the tax paid is more than the State is entitled to receive, claimant is entitled to a refund of the difference between the amount of the tax paid under the original order of the county judge and the amount found due by the county court upon appeal.

WILSON, MCILVAINE, HALE & TEMPLETON, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimants, Washington Porter II and Frederick C. Porter, executors of the estate of Washington Porter, claim a refund of inheritance tax erroneously paid on an erroneous original order entered by the county judge of the county court of Cook county, Illinois.

Washington Porter died June 24, 1922, leaving a last will and testament. The claimants were duly appointed executors of such will and testament, and as such duly qualified and are acting as such executors. Thereafter proper proceedings were had in such court and the county judge in December, 1922, entered an order fixing amount of inheritance tax at $68,611.78 which was paid. On appeal in due time the county court modified the order so entered and found and fixed the actual amount to be paid at $43,483.11, being amount to be paid after deducting the 5% discount.

From this it appears that the executors erroneously paid more than was due the State to-wit: The difference between $65,181.19 and $43,483.11 equals $21,698.08. The Attorney General files a written consent to the allowance of said difference above mentioned, and that 3% should be paid as alleged in declaration. The evidence supports the claimants' claim.

It is therefore the order of the court that claimants be awarded the sum of $21,698.08.

(No. 822—Claimant awarded $212.00.)

E. M. KOHLER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 17, 1924.

RESPONDEAT SUPERIOR—*state not liable under doctrine of.* The State is not liable for injuries sustained by its employees while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made to State employee.* While there may be no legal liability against the State for injuries sustained by its employees while in the discharge of their duty, yet as a matter of equity and good conscience, an award may be made to such employee to reimburse him for moneys expended by him in effecting a cure of his injury.

E. M. KOHLER, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant, E. M. Kohler, files his declaration herein, setting forth that the defendant was on the 22nd day of September, 1923, employing certain automobile investigators, whose duties were to enforce the State automobile laws. Such investigators were supplied with motorcycles with side car attachment for the purpose of patroling the highways.

The claimant further states that on the 22nd day of September, 1923, and for two years previous thereto he was employed by the State of Illinois as automobile investigator, and while in the performance of his duty was riding a motorcycle with E. M. Fellows, also an investigator, who was in the side car attachment, proceeding north of the State highway out of Chatham, Illinois, and pursuing a violator of the automobile law, and motorcycle left the road at a sharp turn and tore into a fence. As a result of the compact, the claimant struck a heavy 4″ by 4″ cross piece, flush with the lower part of his face, causing severe bruises and the dislocating of all his upper and lower teeth, except his rear molars.

The claimant received medical attention from a doctor in Chatham, and then was able to proceed to Springfield, where he was attended at St. John's Hospital by Dr. G. W. Stabben and Dr. George Carruthers.

The claimant further states that he returned to his home and received treatment by Dr. E. E. Hoffa, a dentist, of Terre Haute, Indiana.

The claimant makes no claim for personal injury and pain and suffering or loss of pay, but presents a statement for $212.00 for dental work done by Dr. E. E. Hoffa, which amount has been paid in full by the claimant.

The Attorney General files a demurrer, which, as a matter of law, is sustained by the court.

The evidence shows that the claimant was badly bruised about the face and lost a great number of his front teeth, while all his upper and lower teeth, except the rear molars, were knocked loose.

While the State would not be liable under the law, still the court believes, as a matter of equity and good conscience, the claimant should be allowed the sum which he expended for dental services, he having made no other claim.

It is therefore considered by the court that the claimant be awarded the sum of $212.00.

(No. 828—Claimant awarded $66.50.)

DIXON WATER COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 17, 1924.

GOVERNMENTAL FUNCTION—*state not liable for negligence of its employees.* The State in conducting the State Colony for Epileptics at Dixon, exercises a government function and is not liable for the negligence of its employees therein.

REIMBURSEMENT—*when award may be made.* While the State is not liable for the negligence of its employees, yet an award may be made to claimant to reimburse him for damage occasioned by the negligence of its employee.

HENRY C. WARNER, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration in this case states that the Dixon Water Company, of Dixon, Illinois, a corporation, complains to the State of Illinois that on, to-wit, the 22nd day of September, A. D. 1923, an automobile truck belonging to the State of Illinois and used in and about the conduct of the State Colony for Epileptics at Dixon, Illinois, was being operated in one of the streets of Dixon, Illinois, near the corner of Fifth street

and Depot avenue; that said automobile truck was then and there being operated by an employee of the State of Illinois; that said automobile truck then and there being operated by said employee was so carelessly operated that one of the hydrants at the intersection of Fifth street and Depot avenue in said city was damaged and broken and a large quantity of water was necessarily wasted and it became and was necessary for the Dixon Water Company to replace said hydrant which was broken and shut off the water from the water mains belonging to the claimant in that vicinity in order to install a new hydrant in the place of the hydrant which was broken.

The claimant further alleges that the fair market value of the new hydrant so installed was the sum of $57.50 and that said claimant was compelled to employ two men for one day to install said new hydrant, and that said men were paid the sum of $9.00 for services performed by them.

The Attorney General filed a demurrer, which, as a matter of law, is sustained by the court.

The Attorney General also filed his consent to an award, stating that the case had been thoroughly investigated under the direction of the director of public welfare, that such investigation showed the facts are clearly set forth in the declaration.

The Attorney General therefore consents to an award in this case in favor of the claimant in the sum of $66.50.

The court therefore makes an award to said claimant in the sum of $66.50.

(No. 20—Claim denied.)

THE STEEL FABRICATING CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1924.

FRANCHISE TAX—*when court with jurisdiction.* The court is without jurisdiction to review the tax levying power of the Secretary of State.

THE STEEL FABRICATING CORPORATION, for claimant.

EDWARD J. BRUNDAGE, Attorney General; FLOYD E. BRITTON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed by the Steel Fabricating Corporation to recover the sum of $200.00 claimed to be erroneously paid

to the office of the Secretary of State. The said tax of $200.00 was paid as alleged by claimant to cover a period over which it is claimed that a tax had already been paid.

It is the opinion of this court that the claim is without legal foundation, as under the circumstances an affirmative action by this court would be in the nature of a review of the tax levying power of the office of the Secretary of State, and therefore this court is further of the opinion that this court is without jurisdiction as a matter of law, and there being nothing in the case where the rule of equity and social justice could be invoked, it is ordered that said claim be disallowed.

(No. 704—Claim denied.)

WILLIAM DAWSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1924.

MUNICIPAL CORPORATION—*not liable for negligence of employees thereof.* The State is not liable for injuries sustained by claimant caused by the negligence of an employee of a municipal corporation, even though such corporation may be a sub-agency of the State.

A. L. WILLIAMS, for claimant.

EDWARD J. BRUNDAGE, Attorney General; FLOYD E. BRITTON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed by William Dawson, who operated a delivery wagon, and while driving said wagon at Thirty-third and State streets, Chicago, was struck by a motor truck alleged to be the property and operated by the South Park Commissioners of Chicago.

The State of Illinois, appearing and filing their demurrer, which, according to previous decisions in cases of this character filed in this court heretofore, is sustained, as the court has repeated in former opinions there is no legal liability in this class of cases. One of the chief reasons heretofore assigned, that in opening the gates for obligation in such remote subdivisions of the State on the ground of equity or social justice, would impose a burden upon the taxpayers of the State of Illinois that was not contemplated, in the opinion of this court, when the act creating the court was made a law by the legislature.

This court therefore disallows the claim.

(No. 768—Claimant awarded $3000.00.)

MARY L. MARTIN, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1924.

RESPONDENT SUPERIOR—*when State not liable.* The State is not liable for injuries sustained by its employees while in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY—*when award may be made.* While no legal liability exists against the State for injuries sustained by its employees while in the performance of their duty, but under the peculiar circumstances of the case, the court may enter an award in favor of claimant as an act of social justice and equity.

JOHN J. REEVE, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant, Mary L. Martin, files her declaration herein setting forth that she was, on the 19th day of September, 1922, employed as a teacher in the State School for the Deaf at Jacksonville, Illinois; that she had been an employee of said State School for the Deaf for the term of approximately thirty-five years, as a teacher; that in the month of September, 1922, while in the discharge of her duties as such teacher, she slipped and fell on the floor of the school room, which floor had been recently oiled; the result of such fall being the breaking of the right hip; that her salary amounted to the sum of $2000.00 per year.

Claimant further states that she was treated for said injury by Dr. F. A. Norris and Dr. Edward Bowe; that on account of and by reason of said accident her general health was broken down and she has never been able, and never will be able, to return to her former duties.

The Attorney General of Illinois has filed a demurrer to said declaration, which, as a matter of law, will be sustained. The Attorney General also files a statement setting forth that the claimant's statements are borne out by the depositions filed herein. The Attorney General, in his statement, says that if the court in its discretion should decide that this is a proper case in which to allow an award because of equity and social justice, then in that event the Attorney General suggests that the facts are so clearly disclosed by the record herein that the court can readily apply thereto the provisions

of the Workmen's Compensation Act and make an award in accordance therewith.

The evidence shows that said claimant, Mary L. Martin, is 62 years of age; that she was an employee of the State of Illinois as a teacher in the School for the Deaf for 44 years and five months prior to her injury and that at the time of the injury she was receiving the sum of $2000.00 as her annual salary; that she received surgical treatment from Dr. Frank A. Norris, medical treatment from Dr. Edward Bowe and osteopathic treatments from Dr. J. A. Strother; that the physicians' and hospital bills amounted to the sum of $1,028.00; that the injury to claimant had left her quite lame and that she could walk very little without support and tired quickly; that she has not been able to return to her former occupation and perhaps never will be.

It has been repeatedly held by this court that the doctrine of *respondeat superior* does not apply to the State and the State is not liable for injuries sustained by its employees while in the discharge of their duties. Still the State of Illinois in this case recognizes the valuable and long service rendered to it by this claimant; that she has given the best years of her life to the services of the State; that she has paid out a large sum of money for medical and hospital service and has lost one year salary.

The court believes that this is a case of great merit, and in equity and good conscience, and in the interest of social welfare and justice, it is the opinion of the court that the claimant be and she is therefore awarded the sum of $3,000.00.

(No. 773—Claim denied.)

GEORGE ERWIN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1924.

LICENSE FEES—*when refund will not be made.* Claimant is not entitled to a refund of a license fee paid to a Department of State under a mistake of law.

SAME—*moneys paid under mistake of law cannot be recovered.* Moneys paid voluntarily under a mistake of law cannot be recovered.

J. HARVEY ROBILLARD, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed to recover the sum of $34.00 alleged to be an erroneous payment made to procure license for operation of a truck in such manner that it did not come under the Statute requiring the amount paid as alleged.

The Attorney General comes and files objections to the allowance of said claim on the ground that this court could not and would not allow claims based upon mistakes in the payment of fees to the various departments of the State.

This court in reviewing the facts as appears from the records in the case, is of the opinion that there is no redress upon the claim filed as a matter of law, and it is further the opinion of the court that there is nothing in the record that would permit the court to make a refund as a matter of equity and good conscience, such as is contemplated by the legislature in creating this court. Therefore the court being without remedy in the premises, denies said claim.

(No. 805—Claimant awarded $243.00.)

MISSOURI STATE LIFE INSURANCE CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1924.

INSURANCE TAX—*when may be refunded.* Where there is an overpayment of the amount due the State for privilege tax which was erroneously assessed, a refund of the overpayment may be awarded.

BROWN, HAY & STEPHENS, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration of the Missouri State Life Insurance Company, claimant, filed in this court, sets forth the following:

That the Missouri State Life Insurance Company is an insurance company organized and existing under and by virtue of the laws of the State of Missouri with its principal office at 15th and Locust streets, St. Louis, Missouri; that under provisions of section one of an act in relation to the taxation of non-resident corporations doing an insurance business in this State, in force July 1, 1919, each non-resident insurance company was required to pay 2 per centum on the gross amount of premiums received by them during the preceding calendar year on contracts covering risks within the State of Illinois after deducting the amount returned to holders of policies on risks within the State as dividends, paid in cash or applied in reduction of premiums; that under section two of said act it is provided that if the laws of another state require of insurance companies authorized under the laws of this State and doing business in such other state license fees on a basis of rate which will produce amounts greater than would be produced by the application of the basis provided for herein and by any other laws of this State, then in every such case insurance companies of such state shall be required to pay for such privilege on the same basis as is imposed by the laws of this State upon similar insurance companies organized under the laws of this State; that prior to March, 1922, the State of Missouri did not allow deductions from gross premiums of dividends allowed policy holders but that beginning at said time and allowing the same on taxes for

business done during the year 1921 the insurance department of said State of Missouri allowed said deductions to be made from the gross premiums as is shown by letter attached hereto from Wilbur F. Maring, Jr., Chief Clerk of the Insurance Department of the State of Missouri; that on February 17, 1922, this claimant filed its privilege tax statement with the Department of Trade and Commerce of the State of Illinois as shown by exhibits hereto marked "Claimant's Exhibit II"; that on, to-wit, May 16, 1922, this claimant received statement of privilege taxes from said Department of Commerce as shown by exhibit III attached hereto and made a part hereof, which said sum was paid by check in the sum of $14,193.48, mailed by the claimant on June 8, 1922, received by the Department of Trade and Commerce on July 12, 1922; that of the items shown in said privilege tax statement under paragraph four as dividends paid in cash or in reduction of premiums, amounting to $28,643.12, the sum of $16,485.12 was dividends paid in cash and $12,158.00 was dividends applied in reduction of premiums and on said sum of $12,158.00 said Department of Trade and Commerce erroneously assessed 2 per cent taxes as shown by letter from said department dated April 19, 1923, and attached hereto and marked "Claimant Exhibit IV".

The claimant therefore asks for a refund of 2 per cent of $12,158.00, or $243.00 by reason of said over payment.

The Attorney General files a demurrer to said declaration which, as a matter of law will be sustained by the court.

The evidence in this case clearly shows that the claimant erroneously paid the State of Illinois the sum of $243.00 which under the law claimant was not required to do. The Attorney General files a statement consenting to the award and states that the Superintendent of Insurance of the Department of Trade and Commerce has recommended that said claim be allowed. We therefore find that there is due the claimant the sum of $243.00 which sum is hereby awarded said claimant.

(No. 4—Claim denied.)

ROBBINS INCORPORATED, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 28, 1925.

FISH AND GAME—*state not liable for confiscating when.* The State is not liable for an unauthorized and unlawful act of its agents in the confiscation of unlawful fish.

AGENTS OF STATE—*state not bound by admissions of.* Agents of the State cannot by casual admissions admit away the rights of the State.

SAME—*state not liable when.* The State is not liable for the torts of its agents or officers.

DAVID B. GANN, for claimant.

EDWARD J. BRUNDAGE, Attorney General; FLOYD E. BRITTON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant in this case is an Illinois corporation, with its main office at Chicago, engaged in the business of buying, storing and selling fish, etc., alleges in its declaration that in July, 1920, plaintiff was the consignee for a large amount of fish shipped to it by various companies from Erlean, Ontario, Canada, and the shipments amounted to about four thousand pounds of Lake Erie ciscoes (fish).

That said fish shipped were packed in boxes properly labeled and tagged as "ciscoes," and that the said fish on being inspected by the duly authorized agent of the Department of Agriculture of the State of Illinois, Division of Fish and Game, were confiscated by such agents or officers of the State on the ground that they were undersized white fish, prohibited under Section 23 of the then existing Fish and Game Act (*Hurd's Revised Statutes*, 1919, Chap. 56, Par. 23).

It is claimed that the value of the fish so confiscated was $514.00 and asks judgment of the court for that amount.

The defendant filed general demurrer, and evidence was taken as if general issue were filed. The State offers no evidence and contends that the State is not liable, on the ground that if this was an unauthorized and unlawful confiscation of lawful fish, it constituted a tort of the agent of the State directing the confiscation; that this claim is an action for the damages on account of such tort; and that the State is not liable for such tort, and cites in support of its contention the case of *Gibbon* v. *U. S.*, 8 Wall 268: "No government has

ever held itself liable to individuals for the misfeasance, laches, or unauthorized exercise of power by its officers and agents whom it employs, etc."

Also, that same rule applies in this State. In *Minear* v. *State Board of Agriculture*, where it is said that, "If, as we held, the State Board of Agriculture is an agency of the State in the exercise of its government functions, it is not liable under the common law for injuries claimed to have been sustained as a result of its negligence," etc., and for reasons agreed and supported by such citations the State maintains that the demurrer should be sustained. The evidence is clear and rather voluminous to the effect that no white fish at all were in the shipment so confiscated; and it is shown that a certain officer of agriculture department admitted that perhaps the confiscation was a mistake.

If the agents made the mistake as contended they were trespassers and guilty of a tort. The State is not liable in such cases for the torts of its agents or any official of the State, has been repeatedly held by this court, the State court and the U. S. Supreme Court.

On personal inspection by the court, it has been ascertained that the claimants never have brought this matter to the attention of the "Game and Fish Department."

It is contended that one of the State's agents admitted, *after* the confiscation of the fish, that the State had perhaps made a mistake. Such statement, if made by an agent *after* the *occurrence*, was not proper to be given in evidence and does not bind the State. Agents of the State cannot by casual admissions admit away the rights of the State.

The agents in the confiscation of the fish are presumed to have acted intelligently and without undue haste. If their conduct in the confiscation of the property was a trespass, the aggrieved parties had another remedy than the one at bar. The demurrer will be sustained and case dismissed.

(No. 26—Claimant awarded $411.44.)

WILLIAM BALKE, *et al.*, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 28, 1925.

CONTRACT—*when State liable for supplies.* Where claimant purchases formaldehyde at the request of the Department of Agriculture to use in the elimination of "Black Flag" from wheat in an infected district, the funds of the Department to use for that purpose being exhausted, claimant is entitled to be reimbursed by the State for the purchase price.

BURTON & BURTON, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This claim is brought by William Balke and twenty-nine farmers of Madison county, Illinois, for the recovery of the respective amounts claimed to be due them respectively from defendant for formaldehyde furnished by them in the year 1922 at the request of the State. The facts in the declaration are fully proven and not denied by the State and are as follows: In 1921 the Department of Agriculture of Illinois quarantined the territory embracing the farms of claimants and burnt their wheat straw and bought formaldehyde and treated their wheat therewith in the same year. In the year 1922 complainants were compelled by order of said institution to use formaldehyde again on their wheat; and requested that they buy and use same and the State would pay for same, as this department had exhausted its funds. Claimants bought and used the formaldehyde and used same as directed by the State to eliminate "Black Flag" from the wheat in the infested district and now claim the amounts following their respective names, which claims we hereby award to them as follows:

Claimants.	Awards.
William Balke	$ 6.05
Robert Bonensteihl	9.24
G. Brockmeyer	21.50
Charles Beusking	5.25
Louis Friedman	6.50
Henry Fulreide	10.25
Charles Hydron	50.38
Henry Johann	12.48
Fred Kassing	4.45

Claimants.	Awards.
Mac Kellar	14.00
Henry Kruss	4.25
H. C. Landwehrmeier	18.92+5.50
F. Langreder	3.95
Wm. Maack	4.45
Charles Miecamp	8.15
Wm. McCormick	17.22
Phil Morrison	16.25
Charles Rathert	6.44
Mrs. Sepmeyer (full name not in evidence)	11.10
Louis Soechtig & Son	4.85
W. E. Sponeman	13.05
John Watsek	23.24
Nick Werner	4.40
J. J. Willeredt	4.85
Theodore Wille	10.65
Julius Wille	8.06
Fred Zaiicek	5.25
H. B. Koeller	50.38
Fred Straub	50.38
Total	$411.44

(No. 705—Claimant awarded $2096.10.)

GREAT AMERICAN INSURANCE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 28, 1925.

INSURANCE TAX—*when award may be made for tax paid by mistake.* Where claimant has paid to the State its privilege tax, and the amount of tax to a municipal corporation for the benefit of its organized fire department is not deducted through mistake or inadvertence claimant, is entitled to an award for the amount of the tax paid to the municipal corporation.

BATES, HICKS & FOLONIE, for claimant.

EDWARD J. BRUNDAGE, Attorney General; FLOYD E. BRITTON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This is a suit brought by Great American Insurance Company, a corporation, of New York, to recover from the State of Illinois the sum of $2,096.10, which it claims was by mistake and inadvertence overpaid to the State for privilege of doing an insurance business in the State of Illinois. The evidence is stipulated in writing and is in substance as follows:

1. About September 29, 1919, the Director of Trade and Commerce of Illinois demanded of the claimant $9002.36 as a privilege tax for the year commencing July 1, 1919, and ending June 30, 1920, under provision of the act relating to taxation of foreign insurance companies.

2. The gross amount of premiums in this State during that year received by claimant was $891,204.15.

3. The 2% privilege tax on such gross amount of premiums was $17,824.08. The statute of Illinois directs that from the tax thus computed shall be deducted the amount paid by the corporation for benefit of organized fire departments.

4. The claimant submitted for the inspection of the Director of Trade and Commerce tax receipts paid that year for the benefit of organized fire departments in Illinois in the amount of $8821.72, and upon said director's demand, paid the State of Illinois the difference or balance of $9,002.36 as its said annual privilege tax.

5. The claimant, through agents Ingram and Lerch, paid the City of Chicago on premiums received on account of agents in outlying districts for the benefits of the organized fire department of Chicago $744.27, which payment was made about August 16, 1918, and by mistake and inadvertence *this* tax receipt was *not submitted* to the Director of Trade and Commerce and was not included in the deduction above mentioned.

6. About June, 1920 the Director of Trade and Commerce of Illinois demanded of claimant $10,343.36 as privilege tax for year commencing July 1, 1920, ending June 30, 1921, under the provisions of said law.

7. The gross amount of premiums in this State during that year received by claimant was $960,206.88.

8. The 2% privilege tax on such gross amounts of premiums was $19,204.14, and the amount to be used was the same as that collected in the year prior thereto.

9. The claimant submitted for the inspection of the Director of Trade and Commerce tax receipts paid that year for the benefit of organized fire departments in Illinois in the amount of $8860.78, and upon said director's demand paid the balance of the $10,343.30 as its annual privilege tax.

10. The claimant agents Ingram and Lerch paid the City of Chicago on premiums received on account of such agents in outlying districts for benefit of organized fire departments

of Chicago $673.54, which payment was made about August 22, 1919, and by mistake and inadvertence this tax receipt was not submitted to the director and was not included in the deduction mentioned.

11. About June 25, 1921, there was likewise demanded $17,674.25 privilege tax for year ending June 30, 1922, under same law.

12. The gross amount received that year was $1,489,577.54.

13. The 2% on that amount was $29,791.55, to be deducted for purposes as aforesaid.

14. Claimant submitted to the said director tax receipts of the amounts paid that year for benefit of organized fire departments in Illinois $12,117.30 and on demand paid the State the difference or balance of $17,874.25 as its privilege tax for said year.

15. The claimant, through its said agents, paid the City of Chicago on premiums collected on account agents in outlying districts for benefit of organized fire departments in the city of Chicago $678.29, which payment was made about September 10, 1920, and by mistake and inadvertence this tax receipt was not submitted to the Director of Trade and Commerce and was not included in the deduction mentioned.

16. The Attorney General and the Director of Trade and Commerce each acknowledge that they have inspected the receipts received by claimant from the cities and villages as fire department tax, and that same are genuine and for the three years mentioned and for the respective amounts named aforesaid. That they have examined the three receipts running to Ingram and Lerch as aforesaid from the City of Chicago, and none of them are included in said deductions.

Copies of all these receipts are filed herein. From the evidence so stipulated herein, and on the admissions of the Attorney General and the Director of Trade and Commerce in writing of the facts alleged by claimant, it is very evident that the claimant is entitled to a refund as follows:

Year 1920	$ 744.27
Year 1921	673.54
Year 1922	678.29
Total	$2096.10

and the court so finds. An award for refund of taxes was made in a similar case cited by counsel for claimant—the

case of *American Eagle Fire Insurance Company* v. *State of Illinois*, No. 37 C. of C., Sept. Term, 1922, which is in point, and reported in Vol. 4, p. 231, C. of C.

We accordingly award the claimant the sum of $2,096.10.

(No. 754—Claimant awarded $2,682.94 with interest.)

FIRST TRUST & SAVINGS BANK, EXECUTOR OF THE ESTATE OF ROBERT E. ISMOND, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 28, 1925.

INHERITANCE TAX—*when refund made under Sec. 25.* Where an inheritance tax has been assessed under Section 25, Inheritance Tax Law, and the tax paid, and afterwards the estate in a proper proceeding, is re-appraised and re-assessed and the amount of the tax reduced, claimant is entitled to a refund of the difference between the amount of the tax paid on the original assessment and the amount fixed on the re-assessment of the tax with interest thereon at 3%.

JUDAH, WILLARD, WOLF & REICHMANN, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

First Trust and Savings Bank (a corporation), as executor of and under the last will and testament of Robert E. Ismond, deceased, complainant, brings this suit to recover certain inheritance taxes, claimed to be due it on a re-assessment and re-appraisement in the said estate.

The executor duly qualified as such in said estate and is still acting and is the trustee of and under the will for Julia Hill, Oscar E. Ismond, Henry A. Ismond, Hazel Ismond White and Hazel Kathryn White, for whose benefit this refund is asked. The documentary evidence filed herein is very complete and ample proof of every material allegation in complainant's petition, and we so find. Under the first order entered by county judge, claimant paid inheritance taxes under protest in the sum of $6,684.55, less the statutory 5%, equals $6,350.33.

Later, from the happening of events as alleged in declaration, it became proper under the law to re-appraise and re-assess the inheritance taxes in the estate, and the proper order was procured by claimant from the county court of Cook

County, Illinois, reducing the amount of inheritance taxes that actually should have been paid to $3867.39 and showing by finding an order of the county court that claimant was entitled to a refund of $2682.94.

The Attorney General confesses in his plea the facts alleged in bill and consents to an award in favor of claimant, and against the State of Illinois in the said sum of $2682.94, with interest thereon at the rate of 3% per annum from November 6, 1911, the date of the payment of the taxes to the present time, as provided under Section 25 of "Act to tax gifts, legacies, inheritances, transfers, etc."

We accordingly award claimants, as such trustee under the will, the said sum of $2,682.94, with 3% interest thereon from November 6, 1911, to the date of this award.

(No. 793—Claimant awarded $1938.20 with interest.)

CARRIE EISENSTAEDT, EXECUTRIX UNDER LAST WILL AND TESTAMENT OF LEOPOLD EISENSTAEDT, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 28, 1925.

INHERITANCE TAX—*when refund made, Sec. 25.* Where it appears that an inheritance tax has been assessed and paid, and afterwards it is shown that the appraisers overlooked a codicil to the will and by a mistake the tax was assessed upon the basis of successions through certain clauses of the will instead of the codicil, and upon proper proceedings in the county court the tax was re-assessed, under Sec. 25, Inheritance Tax Law, and the tax reduced: *Held*—Claimant entitled to a refund of the difference between the amount of the tax paid and the amount found due upon the re-assessment of the tax by the county court.

SONNENSCHEIN, BERKSON, LAUTMANN & LEVINSON, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

Carrie Eisenstaedt, executrix under the last will and testament of Leopold Eisenstaedt, deceased, files this claim to recover an award as refund in the sum of $1,938.20.

The facts in the case are that Leopold Eisenstaedt, a resident of the City of Chicago, Cook County, Illinois, died in Chicago May 14, 1923, leaving a last will and testament dated

January 3, 1903, with a codicil thereto attached dated May 21, 1912, which said last will and testament and codicil were duly approved and admitted to record in the probate court of Cook County, Illinois, June 11, 1923, and letters testamentary were duly issued to petitioner as executrix and by an order duly entered of record in the county court of said county November 15, 1923; inheritance tax appraisement was duly approved and the cash value of the successions, interests, estates, legacies, transfers, gifts and property which the parties interested under the said will were entitled to receive by reason of the death of the decedent and fixed the amount of taxes to which the same was liable at the total sum of $3,399.05, and petitioner, as executrix as aforesaid, paid the sum of $3,229.10 in full of the inheritance taxes assessed, being the full amount thereof of $3,399.05 less the discount of 5% allowed by statute for the payment of said taxes, within six months from the date of the death of decedent.

The appraiser in fixing the inheritance tax overlooked said codicil and by a mistake of fact assessed the tax upon the basis of succession through the second and third clauses of said will instead of through the said codicil, and assessed Carrie Eisenstaedt, widow, upon the value of her widow's award and the value of a life estate in the remaining assets and assessed Carrie Eisenstaedt as trustee upon the entire remainder of the estate as though trustee, for the use and benefit of a niece or nephew of decedent.

By reason of the said mistake, the petitioner, under Section 25 of the Revenue act, became entitled to a re-assessment of the inheritance taxes as aforesaid and upon the 19th day of May, 1924, a petitioner secured an order through the said county court re-assessing said taxes, and by reason of entry of said order the amount of inheritance taxes which should be paid by the claimant is $1,358.84, less the 5% discount allowed by the statute, making a total sum which should be paid of $1,290.90.

The amount of inheritance tax actually paid to the county treasurer of Cook County by petitioner was $3,229.10, and the claimant, by reason of the reduction of said taxes, became entitled to a refund of $1,938.20, together with interest from November 14, 1923, at the rate of 3% per annum.

To all of this the Attorney General consents and agrees to an award in the sum claimed.

It is therefore the order of the court that the claimant be awarded the sum of $1,938.20, together with interest thereon at the rate of 3% per annum from November 14, 1923.

No. 846—Claimant awarded $322.78 with interest.)

FLORENCE E. HORTON, EXECUTRIX OF LAST WILL AND TESTAMENT OF FRANK L. HORTON, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 28, 1925.

INHERITANCE TAX—*refund under Sec. 25—when made.* Where an inheritance tax has been assessed and paid under Section 25, of Inheritance Tax Law, expectant upon the happening of a contingency which does not happen, and upon a re-assessment of the tax, in a proper proceeding, a lesser tax is found to be due the State, claimant is entitled to a refund of the difference between the amount of the tax paid, and the amount found to be due upon the re-assessment.

ALBERT and HENRY VEEDER, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This is a suit brought by Florence E. Horton, executrix of the last will and testament of Frank L. Horton, deceased, to recover from the State $323.78 as refund of inheritance taxes paid under Section 25 of the inheritance tax laws of this State.

The claimant is the widow of said deceased, a legatee and executrix of the last will of said decedent, who died a resident of Swansea, in the State of Massachusetts, on the 8th day of February, A. D. 1923.

On August 1, 1923, the county judge of Cook County, Illinois, entered an order assessing the taxable property liable for payment of inheritance tax in Illinois and belonging to the estate of said deceased, and fixed the inheritance taxes then to be paid in the sum of $2,199.02, which, less 5%, equals $109.95, and making $2089.07 actually paid August 4, 1923, to the county treasurer of said Cook County. It was paid on the assumption that claimant, the widow, would die within one year.

She still survives, and after the expiration of one year it was lawful and proper for the claimant to make proper application to the county judge to have the property re-appraised

and the inheritance taxes re-assessed. Accordingly, on September 19, 1924, the county court of Cook County had the property re-appraised and found the inheritance taxes due to be $1859.25, as shown by copy of the record of said order filed herein.

The said inheritance taxes, $1859.25 less $92.96 (being the 5% statutory discount if paid in six months) equals $1766.29, which, deducted from the amount paid, equals $322.78, amount due petitioner. The petitioner computes the amount due to be $323.78, which is evidently a clerical error, as will appear by her figures. The Attorney General admits the liability of the State in the said sum of $322.78.

The court accordingly awards claimant the sum of $322.78, with 3% interest per annum from the 4th day of August, A. D. 1923, the date of the payment of the taxes by claimant.

(No. 885—Claimant awarded $655.92.)

OAK PARK TRUST AND SAVINGS BANK, EXECUTOR OF THE ESTATE OF JESSE H. BALDWIN, Deceased, *et al.*, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 28, 1925.

INHERITANCE TAX—*when refund will be made.* Where it is shown at the hearing upon appeal from an order fixing an inheritance tax, that mistakes and errors had been made in the appraisement of the estate and assessment of the tax, a refund will be made of the amount of the tax erroneously paid.

HERRICK, VETTE & PEREGRINE, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This is a claim filed by Oak Park Trust and Savings bank, executor of the will of Jesse A. Baldwin, deceased, Oneida Institute, and Baptist Ministers' Aid Society of Ohio, Indiana, Michigan, Illinois and Wisconsin for refund of six hundred fifty-five and 92/100 dollars inheritance tax erroneously paid to the State.

Jesse A. Baldwin died a resident of Cook county, Illinois, on December 7, 1921, leaving a last will and testament, and letters testamentary issued to the said executor, who is still acting as executor.

Proper proceedings were had to fix the inheritance taxes under the laws of Illinois and such tax was fixed and paid. In due time it was discovered by the executor that certain mistakes and errors had been made in the appraisements and assessments, and an appeal was prayed and perfected to the proper court; and on trial on such appeal the court found that claimant had overpaid the sum claimed in this suit, to-wit: $655.92, which petitioner prays may be refunded to it. The record evidence is filed and shows conclusively claimants right to recover the said sum. The Attorney General states that he had read the petition and proof in this case and that he finds same to be true and in writing consents to the allowance of the claim.

The court accordingly awards claimant the sum of $655.92.

(No. 856—Claimant awarded $1,575.08 with interest.)

RHODE ISLAND HOSPITAL TRUST COMPANY, AS EXECUTOR OF THE ESTATE OF WILLIAM A. HOPPIN, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 28, 1925.

INHERITANCE TAX—*when claimant entitled to refund, Sec. 25.* When by the happening of certain contingencies contemplated by the will, the estate, upon proper proceedings is re-appraised and the tax re-assessed, claimant is entitled to a refund of the difference between the amount of the tax originally assessed and the amount found to be due upon the re-assessment.

FISHER, BOYDEN, KALES & BELL, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

On January 27, 1915, William A. Hoppin died a resident of the city of Providence in the State of Rhode Island, leaving a last will and testament, appointing Rhode Island Hospital Trust, a corporation, as executor of said estate. The will was duly admitted to probate in the courts of Rhode Island and said claimant duly qualified as executor as directed in the will of said deceased, under the law of said state, and as such executor is still acting.

On March 23, 1917, an order was entered of record in the county court of Cook county, Illinois, in the matter of the

inheritance tax appraisement of the estate of said William A. Hoppin, deceased, the total clear cash value of all the property appraisable in said estate by reason of the death of said decedent was found to be $74,605; and the value of certain successions, interests, estates, legacies, transfers, gifts, and property which the beneficiaries under the will of said decedent, and the amount of tax to which the same was liable together with their respective statutory exemptions are shown in the declaration, and in copy of will attached; and the total inheritance tax was fixed and determined at $2,095.98 which was paid to the county treasurer of Cook county, Illinois, March 30, 1917, together with 6% interest from January 27, 1915, amounting to $273.18 and making a sum total of $2,369.16 paid as aforesaid.

In the will various provisions, conditions and restrictions and contingencies were expressed which are unnecessary here to mention. On the death of Virginia Wheaton Hoppin June 28, 1924, and by reason thereof, all contingencies and conditions contemplated in and by original appraisement and assessment of inheritance taxes became extinguished, and a re-appraisement of the estate and a re-assessment of the inheritance taxes to which the same was liable, was made by the county judge of Cook county aforesaid and entered of record November 24, 1924, by the county judge of said county in which it was ordered and decreed that the cash value of the successions, interests, estates, legacies, transfers, gifts and property, were entitled by reason of the death of said decedent to be re-appraised which was accordingly done, as shown by said order, a copy of which is on file herewith.

A certified copy of said order so entered by the court November 24, 1924. From the record evidence on file it is shown that the sum lawfully due and payable March 30, 1917, was only $702.52 with 6% interest from January 27, 1915, which totaled makes the amount of $794.08; that on said last date claimant paid to the county treasurer of Cook county, Illinois, the sum originally fixed in the first proceedings in the county court and entered of record, to-wit: $2,369.16.

By the happening of certain contingencies and the re-appraisement being made and the amount of inheritance taxes re-fixed as aforesaid by the county court November 24, 1924, it is evident that claimant legally became entitled to a refund of the difference between $2,369.16, the amount paid by him

and the said sum of $794.08, to-wit: the sum of $1,575.08 which said sum last mentioned the court finds is due and payable to claimant with 3% thereon from March 30, 1917.

This the Attorney General in his plea confesses is due from the State of Illinois to claimant and consents to a judgment for same.

The court accordingly awards to claimant a refund of $1575.08 with 3% interest per annum thereon from March 30, 1917.

(No. 579—Claim denied.)

HENRY HIMSTEADT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 20, 1925.

QUARANTINE—*non-liability of State.* This case is similar to that of *Maze* v. *State, supra*, and the decision of the court there announced governs this case, as to the non-liability of the State.

TURNER, HOLDER & BULLINGTON, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

Henry Himsteadt, the claimant, files his declaration asking for an award in the sum of $650.00 claiming that is the value of straw burned on his premises in the year of 1921 by order of the Agricultural Department of the State of Illinois in the quarantined district embracing his lands and the lands of many other farmers in which they were quarantined against an infection known as "Flag Smut."

In that same year the said department ordered his straw and all other straw in the infected district to be burned, which accordingly was done, and his claim is so filed.

In the case of Joseph Maze, against the State of Illinois, in Case No. 21, an opinion was filed on the 28th day of January, 1925, embracing the same facts as the case at bar.

The opinion is written fully in the last above named report and states our entire reasons for the opinion expressed therein, and the same governs in this case and for the reasons expressed in the case heretofore mentioned. The claim is therefore disallowed, demurrer is sustained and the case dismissed.

(No. 726—Claimant awarded $2500.00.)

W. A. HINES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 20, 1925.

GOVERNMENTAL FUNCTION—*not liable for injuries sustained by its employees.* The State in conducting the Illinois State Reformatory exercises a governmental function and is not liable for injuries sustained by its employees therein, while in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* Although the State is not liable claimant may be awarded compensation as a matter of social justice and equity.

W. A. HINES, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed in this case shows that the claimant, W. A. Hines, is a resident of the City of Pontiac, Livingston County, Illinois; that said claimant on January 1, 1923, and for a long time prior thereto was a civil service employee of said State of Illinois and was employed in the State Reformatory, said State Reformatory being an institution under the control of said State of Illinois; that by the direction of the officials of said State institution, he, the said claimant, W. A. Hines, was on January 1, 1923, stationed as chief electrician of said State institution; that on said date there was urgent need for said claimant's services in what is known as South Cell House, and while in the performance of his duties and while using due care for his own safety, said claimant slipped and fell from a ladder to the cement floor of said cell house, a distance of ten and a half feet, causing the ligaments of both feet to be torn and injury to both of said claimant's ankle joints; resulting in a marked periositis, also a constant lameness and soreness in his left shoulder and causing him to be sore, sick, bruised and disabled for a period of ten weeks, and that he has been informed by his physicians that the lameness in both ankles is permanent. Claimant's age is shown to be 55 years; that he has a family, consisting of himself, wife and one minor child; that he has been employed at the Illinois State Reformatory continuously since January 5, 1897, as a school teacher for nine years, clerk in the assistant superintendent's office for two years and for the past twelve years as chief electrician.

The Attorney General of the State of Illinois filed a demurrer to the declaration, which, as a matter of law, is sustained by the court.

The Attorney General entered into a stipulation with the claimant herein, wherein it is stipulated by and between the claimant, W. A. Hines, and the defendant, the State of Illinois, by Edward J. Brundage, Attorney General, that the affidavit of I. M. Lish and the signed statement of Dr. J. S. Marshall and Dr. E. C. Beatty, attached to said stipulation, marked Exhibits "A" and "B," respectively, may be considered by the court as evidence on behalf of the defendant in this cause, as fully as if said affiants had appeared and testified and their testimony had been taken in the form of depositions before a commissioner duly authorized to take evidence in this cause.

From the evidence of I. M. Lish, general superintendent of the State Reformatory, located at Pontiac, Illinois, a State institution, it appears that on January 1, 1923, W. A. Hines, electrician, employed at said institution, was going up a ladder in the South Cell House to inspect a motor located on a platform above a heating fan, about 15 feet above the concrete floor; that when a distance of about 11 feet from the floor, he slipped and fell from the ladder, landing on his heels, causing torn ligaments in both feet and injury to both ankle joints; that said claimant was off duty ten weeks, during which time he received free medical treatment, nursing service and full pay; that said claimant is still lame and that he (Lish) recommends that damages be paid said claimant.

The evidence of the attending physicians is that said claimant was injured January 1, 1923, by falling from a ladder; that they made an examination at the time, which showed both feet contused and swollen; that claimant was put to bed, proper and necessary medical treatment was administered; that claimant returned to duty walking on crutches, which he had used from the 12th day of January, 1923, he returning to duty April 12, 1923; that at the present time (December 19, 1923) said claimant has a limping, halting, shuffling gait; that the injury, in the judgment of said attending physicians was a laceration or tearing of the ligaments at the lower end of the tibia and fibula, at and near the ankle joints, also of the ligaments supporting the bones of either foot; that the ankles at this time (one year after) are much enlarged, motion impeded in either foot fully one-half normal, due to a partial ankylosis following the inflamatory action; that the claimant,

in the judgment of said attending physicians, is unable to perform his work as he formerly would do, as a result of said injury, and that the condition is permanent.

The evidence of the claimant is substantially the same as set forth in said declaration.

The court is fully aware that the doctrine of *respondeat superior* is not applicable to the State and it has been so held by this court in numerous cases; that the State, in the absence of statute, is not liable for the torts of its officers, agents or employees; that the State, in conducting the Illinois State Reformatory at Pontiac, exercises governmental function and is not liable for injuries to those in attendance upon said institution.

The claimant has given the best years of his life for the welfare of this State institution, his injury, according to the evidence of the attending physicians, is permanent; said claimant will never be able to perform the same duties as efficiently as he did before the injury. The State may deem it advisable to dispense with the services of said claimant on account of said injury, thus throwing him out of employment, and his physical condition would render it almost impossible for him to procure employment elsewhere.

It is the opinion of the court, that in equity, good conscience and social justice, said claimant should be entitled to compensation from the said State of Illinois for the injury sustained and for his evident permanent disability.

We therefore award said claimant the sum of $2,500.00.

(No. 758—Claimant awarded $6,122.38 with interest.)

ARTHUR T. WALKER, EXECUTOR ESTATE OF EDWARD F. SEARLES, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 29, 1925.

INHERITANCE TAX—*when claimant entitled to refund, Sec. 10.* Where an inheritance tax has been erroneously assessed, and is paid, and under an order of court the estate is re-appraised and the tax re-assessed, claimant is entitled to a refund of the difference between the amount of the tax paid and the amount found due upon the re-appraisement and re-assessment with interest at 3%.

TAYLOR, MILLER, DICKINSON & SMITH, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant, Arthur T. Walker, executor of estate of Edward F. Searles, deceased, files this declaration for refund of inheritance taxes claimed to be due him as such executor by reason of an erroneous assessment having been made heretofore, the appraisement and assessment having been made and the mistake discovered; thereafter on the 28th day of December, 1923, an order was made by the county judge of Cook county re-assessing and re-appraising said estate; a certified copy of such proceeding being filed herewith.

By reason of such re-assessment and re-appraisement the court found that the claimant was entitled to a refund of inheritance taxes, heretofore paid in the sum of $6,122.38.

The Attorney General admits the facts in this case as alleged by the claimant and consents in writing to an award in favor of the claimant in the said sum of $6,122.38 with 3% interest on said sum from December 28, 1923.

The court therefore awards the claimant said sum of $6,122.38 with interest at the rate of 3% from December 28, 1923.

(No. 769—Claimant awarded $3500.00.)

RAYMOND THOMPSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 29, 1925.

GOVERNMENTAL FUNCTION—*not liable for injuries sustained by inmate of its institution.* The State in conducting, and in repair of the Illinois State Reformatory at Pontiac, exercises a governmental function and is not liable for injuries sustained by an inmate thereof while working under the order or direction of the officers or agents of the institution.

SOCIAL JUSTICE AND EQUITY—*award may be made.* Although no legal liability exists against the State for injuries sustained by an inmate of its institution, yet where the evidence and circumstances justify it, the court may enter an award in favor of claimant as an act of social justice and equity.

OSCAR J. PUTTING, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a case filed by Raymond Thompson, the claimant, by O. J. Putting, his attorney. The declaration states that on to-wit: the 28th day of November, A. D. 1922, the claimant, Raymond Thompson, was an inmate of the Illinois State Reformatory, at Pontiac, Illinois, under sentence of the circuit court of Sangamon county, in said State of Illinois, and was then and there engaged in serving his time in compliance with said sentence of said court, and was in the care, custody and control of the officials and representatives of said State of Illinois, in charge of said Illinois State Reformatory. The claimant avers that on the 28th day of November, A. D. 1922, at the place aforesaid, he was ordered and directed by certain persons and officials of the Illinois State Reformatory, who then and there had charge and control of him, the claimant, to assist in taking down certain forms in and near certain concrete work in and near said Illinois State Reformatory where certain improvements were being made in and about the property of the State of Illinois; that in obedience to the orders and directions of said persons and representatives of the State of Illinois, he did assist in taking down said forms and woodwork in and about said concrete work; and the claimant avers that while he was thus engaged in said work in obedience to the orders and commands of said persons said concrete work gave way and fell upon him, the claimant,

knocking him to the floor and ground there with great force and violence, breaking bones of the claimant and bruising and lacerating him about the body.

It is stipulated and agreed by and between Raymond Thompson, the claimant, and Oscer J. Putting, his attorney, and the State of Illinois by Edward J. Brundage, its Attorney General, that Raymond Thompson on or about the 28th day of November, A. D. 1922, was an inmate of the Illinois State Reformatory at Pontiac, Illinois, under sentence of court, and that he was confined in such institution serving such sentence of Court; that at the time in question said Raymond Thompson was a minor of the age of nineteen (19) years, and was in good health until he received the injuries hereinafter mentioned; that at the time in question the officers of said Illinois State Reformatory and the State of Illinois were engaged in certain construction work and in making certain improvements and repairs in connection with one of the buildings of said Illinois State Reformatory; that in the course of said work a certain concrete arch was constructed, by erecting certain forms and pouring concrete therein; that at the time in question said Raymond Thompson, together with certain other inmates of said institution, was ordered to assist in removing said forms surrounding said concrete arch, before said concrete had become properly set and hardened.

It is further stipulated and agreed that while said forms were being removed from said concrete arch, and while the said Raymond Thompson was then and there engaged in obeying the orders and directions of the officers of said Illinois State Reformatory by assisting in the removal of said forms from said concrete arch, said arch broke and fell and certain portions of said concrete in said arch of great weight fell and the said Raymond Thompson was struck by certain portions of said forms and concrete and knocked to the floor and ground there with great force and violence whereby and in consequence of which the vertebra of the said Raymond Thompson was broken and crushed and dislocated, whereby and in consequence of which said Raymond Thompson was then and there seriously and permanently injured; that his back was broken and he was then and there paralyzed from the waist line on down through both of his legs and feet; that since said date of November 28, A. D. 1922, he will be a bed patient so long as he lives; that he will be

utterly helpless and unable to provide anything by way of his own necessaries and maintenance; that he is a young man of no prospects of receiving money or assistance except by charity; that he is dependent solely on his mother for support at this time; that his mother is a poor woman with no means of any kind except what she is able to earn by means of doing family washings and other similar forms of labor for other people; that said construction work was in charge of and under the control of Chief Engineer Frank Gifford, who is no longer in the employment of said State of Illinois, having resigned from his position on the 14th day of October, A. D. 1923; that the cause of the injury of said claimant, Raymond Thompson, was carefully investigated by the Department of Public Welfare of the State of Illinois under the direction of the Honorable Sherman W. Searle, Assistant Director of said Department of Public Welfare; that in making said investigation said Sherman W. Searle took statements from different persons and had the same reduced to typewriting and reported the same to the Department of Public Welfare, together with the conclusions of him, the said Sherman W. Searle, from such investigation; and that a full and complete copy of such statements and conclusions of said Sherman W. Searle comprising a complete copy of his report is hereby attached and by this stipulation is admitted as the evidence in this case.

It is further stipulated that the copies of the letters hereto attached are copies of letters of the doctors who acquainted themselves with the physical condition of said Raymond Thompson, and that such copies do correctly set forth the said Raymond Thompson's injuries and his physical condition.

The Attorney General filed a demurrer to the declaration, which, as a matter of law, is sustained by the court.

From the stipulation on file in this court, and from the evidence of Sherman W. Searle, Assistant Director of the Department of Public Welfare, Dr. J. A. Marshall, Frank A. Gifford, William H. Bater, Wray W. Call, John R. Cleveniger, and James W. Jones, the court finds that the said claimant, Raymond Thompson, is entitled to an award; and the court recommends that a trustee be appointed by the circuit court of Sangamon county, Illinois, to take charge of said sum of money so awarded said Raymond Thompson, invest same and to dispose of same in caring for and providing the necessary wants and comforts for the said Raymond Thompson, and

that the attorney fees of Oscar J. Putting, attorney for said claimant, Raymond Thompson, be fixed by said circuit court of Sangamon county.

The court therefore awards to the said claimant, Raymond Thompson, as an act of social justice and equity, the sum of $3,500.00.

(No. 853—Claimant awarded $1375.00.)

W. O. POTTER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 20, 1925.

FEES AND SALARIES—*salary of city judge—how fixed.* The salary of a city judge is not fixed by law, but by the number of inhabitants of the city in which he is elected. (*Sheldon* v. *State*, 4 C. C. Rep. 353 followed.)

SIMS, WELCH, GODMAN & STRANSKY, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a case brought by the claimant for the purpose of recovering for additional compensation for service as judge of the city court for the City of Marion, Illinois, from June 24, 1919, to October 1, 1922, it having been stipulated between the parties that the City of Marion as fixed by the census of 1910 was 7,093, that on January 1, 1920, federal census showed the population of said City of Marion was 9,582, and that no other census was taken prior to October 1, 1922, and that said claimant was paid a salary of $1,500.00 per annum during his entire term; that he demanded his salary at the rate of $2,000.00 per annum from and after January 1, 1920.

As heretofore stated by this court in the case of *Sheldon* v. *State of Illinois*, 4 Court of Claims Reports 353.

The salary of a city judge is not fixed by law, but by the number of inhabitants of the city in which he is elected.

It is the opinion of this court that no reason appears from the record in this case that any departure should be made from the rules of the court in the Sheldon case above mentioned.

It is therefore recommended by this court that the claimant be allowed the sum of $1375.00 as additional salary based

upon the population of the City of Marion for the period of two and three-fourths years.

(No. 7—Claim denied.)

ANNA KLITZKE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

LEASE—*when no recovery can be had on—limitation statute.* Where it appears upon the face of claimant's statement that the claim is barred by the statute of limitations an award will be denied. (*Jackson v. State*, 4 C. C. Rep. 333, followed.)

TATOR & TATOR, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears from the claimant's statement that a lease was entered into by the said claimant and the Illinois National Guard for the period of one year from May 1, 1915, which was a continuance of a former arrangement.

The rental for this particular period was to be $70.00 per month for a period of one year. It further appears by the statement that the guard occupied said premises during said period until August 31, 1915, and paid rent up until that time upon that date or before rent was paid as agreed, but did not pay rent for the balance of period of eight months.

The claimant makes an additional claim for $70.87 for repairs.

The defendant comes in and urges the Statute of Limitations, and this court in this claim in following its language;

In *Jackson v. State of Illinois*, 4 Court of Claims, 333, this court said:

"It is also the duty of this court to do justice to the people of the State and that wherein a claim is not brought forth within a reasonable time, it should not be allowed."

It is the opinion of this court at this time that the claim brought should at least be within the rules prescribed by law. In the first place that the people may know their tax burdens and the second place so that evidence would not become stale or lost, and, therefore, for the reasons assigned, the claim is denied.

(No. 24—Claimant awarded $3044.41.)

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

GOVERNMENTAL DEPARTMENT—*when moneys paid into will be refunded.* Where moneys have been paid to a Department of the State, under protest, and by the Department paid into the State Treasury, and it afterwards appears that the State is not entitled to it, the court will enter an award for the refund of the moneys paid.

MAYER, MEYER, AUSTRIAN & PLATT, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The Equitable Life Assurance Society of the United States, a corporation under the laws of the State of New York, claimant, presents its claim herein, praying for a refund of $3044.41, which it alleges was paid to the State of Illinois under protest, to the Department of Trade and Commerce of the State of Illinois, November 20, 1918.

In June of the same year, in connection therewith, claimant had paid to said department $22,469.82. The department, however, would not accept this in full, but insisted upon the payment of $3044.41 additional, believed by the department to be due it from the claimant.

The evidence before the court is by stipulation in writing of the facts and the laws governing by counsel for the respective parties; but it is quite lengthy and unnecessary to state in the opinion.

Under the laws of New York governing the making of such reports to the said department, some doubt existed as to allowing certain credits mentioned in the stipulation, and a suit was then pending in the New York courts to construe the law relative thereto. The case went to the New York Court of Appeals, where it was finally decided favorably to the contention made by claimant in this case, as to the meaning and force of the New York laws governing such reports.

In the meantime, however, and before the final opinion was so rendered, as stated, the Department of Trade and Commerce made demand on claimant to pay the said additional sum of $3044.41. Relative to this some correspondence was

had between the claimant and the Department of Trade and Commerce, and it was tacitly agreed that the said last mentioned sum might be paid "under protest," awaiting the finding of the court of appeals as aforesaid.

In the course of time, an opinion was handed down by said court, which, in effect, sustains the contention of the claimant in this case, and is admitted by the Attorney General of Illinois, and, accordingly, claimant wrote a letter to Mr. W. H. Boys, demanding a return of the said sum. Mr. Boys was succeeded by George A. Barr, and he in turn by William A. Murphy. The correspondence between claimant and the various directors aforesaid that it certainly was mutually understood, if not actually agreed, that this amount would be or should be refunded to claimant if the said court of appeals should hand down the opinion, which it finally did; but this $3044.41 had never been turned into the state treasury, and it was agreed by the director and claimant that it be turned into the state treasury as an accommodation to all parties and to relieve the director from further carrying it. It having been turned into the treasury, there is no way for claimant to withdraw it, except through an award by the Court of Claims.

The Attorney General, by his brief herein, recognizes and admits the claimant's equitable right; and that when the sum was paid into the Department of Trade and Commerce that it was to be held pending the action of the court in said cause. The Attorney General says, however, that claimant paid it voluntarily and not under protest, and that money paid voluntarily, without protest, cannot be recovered, etc. The correspondence between the claimant and Fred W. Potter, superintendent of trade and commerce, shows very clearly that the last payment was made "under protest."

The evidence shows conclusively that the claimant did not at the time, nor since, owe the said Department of Trade and Commerce the sum of $3044.41, or any part thereof, and that claimant is entitled to a refund of same, which, as a matter of law, equity and good conscience, should be refunded. We accordingly find in favor of claimant and against defendant and award claimant the sum of $3,044.41.

(No. 642—Claimant awarded $200.00.)

WILLIAM B. SINCLAIR, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

RESPONDEAT SUPERIOR—*state not liable for torts of inmates of its institutions.* The State is not liable for the torts or acts of inmates of its institutions.

SOCIAL JUSTICE AND EQUITY—*award may be made.* The court may upon grounds of equity and social justice enter an award in favor of claimant although no legal liability exists against the State.

CHARLES C. ELLISON, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This is an action brought by William B. Sinclair of Alton, Illinois, to recover damages for damage and destruction of personal property of claimant by inmates of the State Insane Asylum at Alton, Illinois, in 1922. The evidence is conflicting as to the amount of damage inflicted, and uncontradicted as to the remainder of facts related by claimant in his declaration and supported by his deposition, taken by stipulation by counsel of the parties to the suit.

The facts stated in claimant's declaration and the evidence are substantially as follows: The claimant operated a farm about one-half mile west of Alton Hospital for Insane in June, 1922, and prior to and subsequent to that date. He, claimant, was the owner of one horse, for which he paid $150.00 some time prior thereto, and a one-horse wagon or shay, which was valued at $15.00. He was also engaged in raising fancy, thoroughbred Rhode Island Red chickens, which valued at about $4.00 each. Some of them were capons, the rest breeders.

On June 22 of that year an inmate, or inmates, of said institution slipped away from the guards and went to the house of claimant practically in a nude condition, having a few strips of ribbons or rags tied about him, and then and there began the destruction of the personal property of claimant, in claimant's absence. Claimant was called to the house and found that about 106 of his Rhode Island Reds had been beaten up, crushed and killed and some of them put in several sacks, and great quantities of feathers at different points on

the premises. The insane inmate had hitched up the farmer's (claimant's) horse to the wagon in question, attacked him or frightened him, causing him to run away with the "shay" attached. After the horse ran some distance, he landed into a ditch with the wagon. The horse's jaw was broken, his back hurt, so that the horse always walked unsteady and wabbly thereafter, and he later sold the horse for about $73.00, and the horse soon died thereafter; but as to whether the death of the animal was caused by the injury received in the "dump heap" in the ditch when the horse and shay went into the ditch, is not in evidence in the case.

Dr. Trovillion, the superintendent of the said insane asylum, and guards came up after the aforesaid happenings and captured the escaped inmate who had wrought the destruction and damage aforesaid, and took him back to within the confines of the asylum. It was then and prior to this the custom and practice of said institution to allow the inmates "non-restraint," so-called by the prison authorities, but kept them guarded. Dr. Trovillion could not estimate the loss of fowls at over two dozen, and in this he was corroborated by other witnesses. He gave it as his opinion that the old wagon was at time of the wreck practically worthless. The veterinarian stated that the horse would fully recover. It seems to us that the claimant could have easily produced the evidence of others as to value of the fowls, horse and wagon, but did not. It should have been done. But the evidence of Dr. Trovillion and others in part corroborate the evidence of claimant. As the evidence is conflicting, it leaves it up to the court to make a rough guess at the real amount of damage sustained on the occasion.

In this unfortunate matter, claimant is certainly without fault. The practice of "non-restraint" in the management of the inmates of any state asylum for the insane should cause the State to exercise a high degree of care and watchfulness in the care of the inmates. Whether the State was exercising such care at the time of the commission of this act causing the claimant to lose his property is not in evidence.

It is not clear in the mind of the court, from the conflicting evidence, whether claimant lost 106 chickens, or two dozen only. No evidence is given to show the value of the horse and wagon before they were damaged. While, as a matter of law, the State is not liable for damages committed by an

insane inmate of the State's asylum, yet under the particular circumstances surrounding this case, social justice, equity and good conscience impel us to award the claimant something for the loss of his property. In the analysis of the conflicting evidence we have concluded to and do hereby find in favor of claimant and award him $200.00.

(No. 701—Claim denied.)

LEAVIE SMITH *et al.*, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

NON-LIABILITY OF STATE—*state highways.* The State in the maintenance and repair of its highways used exclusively by its institution is not liable for damage to an adjoining property owner by overflow water resultant to the repair of such highway, even though the highway is used by the public.

WM. H. SCHWERK, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration in this case sets forth that the claimants herein owned four lots, being a part of subdivision of a certain tract lying one-half mile west of the City of Chester, Illinois, during 1922, said lots fronting on Kaskaskia street, a public highway; that there was a dwelling house which claimants allege had a market value of $1,350.00; that Leavie Smith, Ardell Smith, Walter Smith, Grace Smith, Edith Smith and Hazel Smith are minors; that on April 1, 1922, they were the owners in fee simple of the following described real estate: Lots Twenty-five (25), Twenty-six (26), Twenty-seven (27) and Twenty-eight (28) in the subdivision of a part of the Northeast Quarter and the Southeast Quarter of Section Twenty-three, Town Seven, South, Range Seven West, in Randolph County, Illinois, lying about one-half mile west of Chester, Illinois; that the State of Illinois kept and maintained a highway for the exclusive use of the Criminal Insane Asylum, a public institution owned by the State of Illinois, at Menard, Ill., said highway being located immediately in the rear of said lots at an elevation of about sixty feet above the front elevation of said lots; that between March 26, 1922, and April 15, 1922, and at different times thereafter, convicts from

the Illinois Southern Penitentiary under the control of and at the direction of the warden of said penitentiary and the superintendent of the Criminal Insane Asylum at Menard, Illinois, had hauled large quantities of rock and dirt and had filled it in along said highway at the rear of said premises; that said fill was made in a negligent and careless manner, diverting the natural flow of water along said highway, causing it to flow into, over and upon the premises of the claimants; that the water flowing as aforesaid over the claimants' premises caused large quantities of dirt on the rear of said premises to move and slide toward the front of said premises, thereby rendering the house and buildings on said premises unsafe and thereby depreciating the fair cash market value of the premises in the sum of $750.00.

The Attorney General, on behalf of the State of Illinois, filed a demurrer to the declaration, which, as a matter of law, is sustained.

The evidence shows that there was a natural elevation at the rear of said lots; that it is very hilly in that immediate vicinity; that the State of Illinois endeavored to provide and maintain a roadway, not only for its own use, but for the use of the public; that there was heavy rains in the spring of 1922, and said rains caused a slide above and below the roadbed, which would have occurred regardless of there being a road there. There is also some evidence that the same rent was paid to claimant after this slide happened as was paid before.

None of the witnesses testified to any personal inspection or examination of the hill from which they could tell the reason for the slide of earth. There seems to be no controversy but what slides occurred there before the State had repaired this road.

That the State of Illinois is not liable, there is no question. It would be against public policy to allow claims of this nature against the State of Illinois, and we therefore deny the claimants an award in this case.

(No. 707—Claim denied.)

WILLIAM L. CORRIS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

SERVICES—*rules of court must be complied with.* The rules of the court must be complied with by claimant before he is in position to ask an award for services rendered.

SAME—*consent by State officer will not dispense with rule of court.* Consent to an allowance of a claim by a State officer will not dispense with a compliance with the rules of the court.

OSCAR J. PUTTING, for claimant.

EDWARD J. BRUNDAGE, Attorney General; FLOYD E. BRITTON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant, William L. Corris, by Oscar J. Putting, files his declaration herein setting forth that said claimant was active in procuring reports and transcripts of testimony and evidence in a certain proceeding that was pending before the Illinois Commerce Commission on the 15th day of July, 1921, and prior thereto, wherein an application was filed in behalf of the city of Chicago, for the reduction of gas rates in said city by the People's Gas Light and Coke Company; that said hearing was had on said petition in said city of Chicago for a number of days; that in the course of said proceedings the Attorney General (then Edward J. Brundage) directed one of his assistants, Assistant Attorney General Matthew Mills, to assist in said hearing before said Illinois Commerce Commission; that in his endeavor to render services to the said Illinois Commerce Commission and the State of Illinois in accordance with the wishes of said Attorney General Edward J. Brundage, said Assistant Attorney General Matthew Mills did attend said hearing regularly and attended the taking of testimony and the obtaining of transcript of certain evidence, that the sum of $1610.00 is now due claimant for services rendered.

The Attorney General, Edward J. Brundage, by Floyd E. Britton, filed his consent to the award.

There is no evidence before this court as to the number of days of service rendered by said claimant, neither is any evidence before the court that said services was rendered by and with the consent of the Commerce Commission.

There is nothing but the bare statement of claimant that the services were rendered.

Owing to the lack of proper evidence and the absolute failure of the claimant to comply with the rules of the Court of Claims, the case is dismissed and with the recommendation that no award be made.

(No. 717—Claimant awarded $100.00.)

THOMAS F. TREDE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

RESPONDEAT SUPERIOR—*when State not liable.* The State is not liable for injuries sustained by its employees while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* The court may on ground of social justice and equity enter an award in favor of claimant.

E. A. PERRY, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This is a suit brought by claimant, Thomas F. Trede, to recover for personal injuries alleged to have been incurred by him while in the employ of the State at the fair ground in May, 1922. Claim was filed June 29, 1923, and evidence taken by stipulation and filed February 14, 1925.

Claimant alleges that while endeavoring to operate a tractor for the State, he received a slight cut over the left eye which caused him to lay off of the job a week, and pay a doctor's bill of five dollars for taking two stitches in the wound above the eye, and that the cut caused a scar that causes a permanent disfigurement of the face.

The evidence shows that he was paid for the entire time he lost on account of the injury. When he finally quit his job, he did not do so as a result of any injury received. There is no evidence of any suffering of consequence; or that he was confined to his bed or house in consequence of the injury. From our analysis of the very meager evidence as to his disfigurement, we are inclined to think it very slight. One of his witnesses testified "it only showed a little streak about three-fourths of an inch long; and that if he were not looking for the injury, he would not likely notice it a few feet away."

He was endeavoring to run the tractor without ever having had any experience and was awkward in his efforts to do so: hence the accident. There is no evidence that the $5.00 he paid the doctor for taking the two stitches was paid to him by the State. He suffered very little, and that only for a few days. While the claim seems to us quite trivial, yet he was in the employ of the State at time of the accident. We have decided to and do award claimant $100.00.

(No. 723—Claim denied.)

RECTOR EGELAND, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

CIVIL SERVICE—*when salary not allowed.* Where claimant under Civil Service employment of the State, under an indefinite leave of absence, enters the U. S. Military Service and is discharged therefrom, the State is not liable to him for any salary during the time of his absence.

SAME—*reinstatement is in discretion of commissioners.* The reinstatement of an employee in the service of the State is a matter left to the discretion of the Civil Service Commission.

PAUL W. HERBERT, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE LEECH delivered the opinion of the court:

The complainant alleges that he was a duly certified rodman under civil service in June, A. D. 1916, and by another examination in January, 1917, he was certified as topographic draftsman and did for said work receive a monthly salary of $150.00. The claimant further alleges that in May, 1917, he entered United States military service under indefinite leave of absence. Claimant further states that he was to be reinstated when he was discharged from military service. Claimant further alleges that he was refused reinstatement upon his application made in July, 1919; that he persisted in his demand for reinstatement up until July, 1921, and that during that time he made claim for payment of salary for eighteen months at $150.00 per month.

The defendant, by the Attorney General, comes and files its demurrer, whereupon it is considered that as a matter of law the demurrer should be sustained.

This is a case similar to another filed for the consideration of this court, which claim was denied, and this case inspires in addition to the facts in the other case, patriotic consideration, because of the fact that the claimant took a leave of absence for the purpose of entering military service in behalf of our country, and although the members of this court would personally feel disposed to make an exception in this case for patriotic reasons, yet no exceptions can be made by any court which realizes that they are controlled by the law of the nation or state and cannot therefore depart from the law or the practice because the law of the country and of the state is greater than any court functioning under any system of our laws.

It is the opinion of the court, as stated in the other case, that the question of reinstatement under the powers granted to the Civil Service Commission or any other branch of our State government to discharge employees or to refuse to reinstate other employees on account of the lack of work for such employees or other reasons indicated by laws and usages, is with the discretion of such commission or branch of the State government having control of such employment, and in this case one of the reasons urged by the defendant was the lack of a place giving work for the claimant, and from all the records and evidence before the court, the court cannot find there has been a breach of discretion that violates the laws of our State or the rules of employment under civil service.

Therefore the claim is denied and the case dismissed.

(No. 738—Claim denied.)

JOHN LEWSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

STATE OFFICERS—*cannot admit away rights of State by stipulation.* No officer or agent of the State can by stipulation or otherwise admit away the interest or rights of the State in any suit, and that is specially true where claimant brings his suit for services rendered for the officer or agent who enters into such stipulation.

SAME—*appropriation for officers—no right to contract indebtedness against State.* No officer has the legal right to contract any indebtedness on behalf of the State, nor assume to bind the State in any amount in excess of the moneys appropriated for his office, unless authorized by law.

SAME—*officer cannot enter into contract when.* No officer or agent of the State can contract to bind the State, directly or indirectly, for the payment of money, unless expressly authorized by law.

SAME—*cannot ignore limitation of appropriation for their office.* State officers cannot ignore the limitations of appropriations made by the Legislature for their respective offices or departments and rely on the Court of Claims to take care of all claims made in excess of such appropriations.

SAME—*no equitable relief against statutory prohibition.* Where the statute forbids the doing of a thing equity will not afford relief.

RULES OF COURT—*must be complied with.* Where claimant fails to comply with Rule 5 of the court, the court may dismiss the claim.

FRED L. LOYDA, for claimant.

EDWARD J. BRUNDAGE, Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This is a claim filed November, 1923, by John Lewson of Chicago, Cook County, Illinois, in the sum of $4,000.00 on a contract awarded to him by the Attorney General to compile and digest the report of the Attorney General, 1921-1922, for which he and the Attorney General had an understanding that he would pay claimant a reasonable compensation. The claimant, after a statement of his qualifications to do such work as that alleged in this declaration, says that in May, 1917, the Honorable Edward J. Brundage, Attorney General of Illinois, appointed claimant his Assistant Attorney General, at an annual salary of $3,600.00 per annum. After doing quite a lot of work in such capacity, claimant was to undertake the digesting and compiling the opinions and reports of the Attorney General, providing the claimant with a special stenographer at an annual salary of $1,400.00, and with a well furnished office, stationery and supplies. Claimant had edited and compiled several reports, for which we presume he was paid, or that such duties constituted

a part of the duties of his office while on salary as stated. That in due time, we can't tell when, he entered upon the digesting and compiling of the report of 1921-1922, when, on account of vetoes of certain appropriations to the Attorney General, said officer deemed it advisable to discontinue the office services of claimant, and assigned his stenographer to other work; that in July, 1922, the Attorney General again engaged him to resume his work of making the bi-ennium report of 1921-1922, and that said report was prepared and published and distributed.

That at the time, July, 1922, there existed and were available funds which had been appropriated to the use of the Attorney General out of which this claim might have been paid; that by the time claimant completed the work the said funds out of which he might have been paid were either exhausted or were urgently needed by the Attorney General for other purposes, such as carrying on the routine business of his office and necessary litigation, and he refused to pay claimant on account of compiling and digesting the said report of 1921-1922, including stenographer fees and other expenses, the said sum of $4,000.00.

Attached to the declaration appears this stipulation, to-wit:

"In the Court of Claims of the State of Illinois, September Session, 1923.

John Lewson *vs.* State of Illinois; claim for compensation for services rendered Attorney General.

STIPULATION:

It is hereby stipulated and agreed by and between the parties to the above entitled cause that the facts in statement of claim are true in substance and in fact, and that $4000.00 is reasonable compensation for the services performed by said claimant as alleged.

(Signed) JOHN LEWSON, *Claimant.*

(Signed) EDWARD J. BRUNDAGE, *Attorney General.*"

Rule 5, adopted by this court, requires that every claimant shall state whether or not any other person has any interest in his claim, and if so who and how much, etc.; whether presented to any state department or state officers, tribunal, etc.; and a bill of particulars, stating in detail each and every item and the amount claimed on account thereof, and the same shall be attached to claimant's declaration.

Claimant entirely ignores this rule. It has been repeatedly held by this court that said rule must be complied with, especially in important and unusual cases like the one at bar.

While this case is more in nature of a case in equity than a suit at law, still the rule makes no distinction between the two in the requirement set forth in Rule 5.

A bill of particulars should always be filed for the information of the court.

The claim was brought and filed by claimant on the 9th day of November, 1923. His attorney entered his appearance as attorney in said claim January 8, 1924; and neither claimant or his attorney has ever filed a brief or presented an argument in the case; or offered evidence of other witnesses familiar with such work, as claimant claims he has done, as to its reasonable value.

It is true the Attorney General admits by stipulation that claimant did the work as alleged and that the price charged by him is reasonable.

The Attorney General cannot, nor can any other state officer or agent of the State, by stipulation, or otherwise, admit away the interests and rights of the State in any suit. This is especially true in cases wherein the claimant, bringing the suit, is bringing it for services rendered by claimant for the officer confessing the right of action against the State. Such procedure is contrary to public policy.

The State legislature biennially makes appropriations for ordinary and contingent expenses, etc., for the operation, maintenance and the administration of the several offices, departments, institutions, boards, commissions and agencies of the State government.

The appropriation bill specifies for what purpose or purposes the appropriation is made.

The elective State officers and the various State institutions know the amount or amounts appropriated for them respectively, and that it is intended to be sufficient to conduct the duties of such offices or departments for two years after July 1st, succeeding the appropriation. It is unnecessary to cite the statute on this point.

Again, the statute of Illinois provides that "No officer, institution, department, board or commission shall contract any indebtedness on behalf of the State; nor assume to bind the State in any amount in excess of the money appropriated, unless expressly authorized by law to do so." *Cahill-Callagan, Illinois Revised Statute,* 1923, Chap. 127b, Sec. 30, page 3246.

This would seem to preclude claimant from right of recovery, but he claims that equity should aid him in his predicament. Where the statute prohibits the doing of a thing, equity will afford no relief. Good conscience, without the aid of law or equity, can do nothing for claimant, except to sympathize with him, a feeling which this court entertains for this claimant. Again, the claimant knew before he enlisted in the work the last time he went at it that it might be doubtful about his pay, and he should have thus been a little more cautious in doing the work. It is not right clear whether or not claimant was still getting a salary as an assistant to the Attorney General when he did this work. We are inclined to think his salary has ceased. This was another danger signal for him in contracting with his former employer. No officer or agent of the State can contract to bind the State directly or indirectly for the payment of money for any purpose, unless expressly authorized by law. If he has any common law powers that conflict with the statute, the statute governs. The legislature, through its committees, ascertains biennially what is a reasonable and proper amount to be appropriated for each officer and department. It is a vital part of the duties of the legislature, in its wisdom and deliberations, to carefully ascertain what amount of money our State should expend in the succeeding two years; and we believe that the legislature and the governors of Illinois have always been very liberal in the allowances in the appropriation bills.

To allow this claim would be to establish a most dangerous precedent. It would open up the avenues for all State officers and State departments to ignore the limitation of the appropriation for their respective offices or departments, if they saw fit so to do, and rely on the Court of Claims to take care of all claims made in excess of such appropriations.

We believe the legislature and Governor are much better informed on matters of appropriations than the Court of Claims is or ever will be, and that that subject is exclusively within their powers and duties, and we will not usurp it. We could cite several Illinois Supreme Court decisions in support of our views; but we feel it is unnecessary to do so.

For the reasons above stated, the case will be dismissed.

(No. 748—Claimant awarded $3750.00.)

ERMA C. CROSBY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

RESPONDEAT SUPERIOR—*doctrine of not applicable to State.* The doctrine of *Respondeat Superior* is not applicable to the State is not liable for injuries sustained by its employees while in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* While there may be no legal liability existing against the State for injuries sustained by its employees while in the performance of their duty, the court may as an act of social justice and equity enter an award in favor of claimant.

BOWE & BOWE, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This case comes before the court by declaration filed by Erma C. Crosby, by Bowe & Bowe, her attorneys, setting forth that on the 26th day of February, A. D. 1922, the State of Illinois and trustees of the University of Illinois maintained, managed and operated a certain school, to-wit: Urbana, in Champaign County, Illinois, known as the University of Illinois; that as a part of said university of the said State of Illinois, the said State of Illinois and trustees thereof maintained certain shops and foundries in which dangerous power driven machinery was used, and concerning which there were statutory regulation for the protection of employees; that on, to-wit, February 26, 1922, Glen M. Crosby, husband of petitioner, was employed as an instructor in one of said workshops or foundries by the said trustees of the University of Illinois; that the said Glen M. Crosby was then and there injured by reason of an accident which arose out of and in the course of his said employment; that said Glen M. Crosby was killed by reason of the said injuries; that his wages during the year preceding his death were, to-wit, $200.00 a month; that the deceased left him surviving a widow, Erma C. Crosby, the petitioner herein, who was dependent on the deceased and whom he was under legal obligation to support at the time of his death, which was on the 31st day of March, 1922; that claimant resides at 246 South Fifteenth avenue, Maywood, Illinois.

The Attorney General filed a demurrer, which, as a matter of law, is sustained.

From the stipulation of facts agreed upon between the parties hereto, by their respective attorneys, it appears that the Illinois State University at Urbana, Illinois, is a large educational institution conducted by the State of Illinois; that its grounds comprise many acres; that it has large and expensive buildings, some of which are several stories in height; that in some of the buildings are high pressure boilers for heating, power and other purposes; that said University of Illinois has departments devoted to the study of engineering in its various forms and that in some of these departments there are rooms filled with power driven machinery and dangerous appliances, required by law to be guarded in special manner, which said machinery and appliances are used in the general work of instruction and demonstration in the said branches of science; that the State of Illinois employed Glen M. Crosby, the deceased, as an instructor in one of the engineering departments, and that his work required him to be in a certain foundry conducted by the said university as a part of its school; that on or about the 26th day of February, A. D. 1922, the said Glen M. Crosby, while so employed in the foundry of the University of Illinois, as assistant superintendent, or in some similar capacity, was assisting in the lifting of some heavy metal object which was suspended from a beam by means of a chain; that some part of the arrangement which held the metal object suspended broke and that the chain, or some other part of the contrivance, fell and struck Glen M. Crosby on the cheek, causing a wound to his jaw; that the wound to the jaw became infected and that Glen M. Crosby died five weeks subsequent thereto from a strepticoccic infection; that said Glen M. Crosby was employed at a monthly rate of pay of One Hundred Eighty Dollars for ten months, or Eighteen Hundred Dollars a year.

It is further stipulated that the trustees of the university be dismissed as parties respondent, and the court finds that an award should be allowed in this case in equity and good conscience, and we do therefore award the claimant the sum of $3,750.00.

(No. 766—Claimant awarded $500.00.)

OLIVER CLARK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

GOVERNMENTAL FUNCTION—*state not liable.* This case is controlled by the decision of the court in *Denny* v. *State, supra.*

J. FRED GILSTER, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant was employed by the State of Illinois as a guard of the Chester State Hospital, and while in the performance of his duties as such guard it appears that he was beaten and badly ill-treated by being assaulted and bitten by a great number of the inmates of said institution in their endeavor to escape. It has been the custom of this court in handling these claims to take into consideration the Workmen's Compensation Act, but it further appears that since his injury he has been receiving his full pay from the State, which would have been more than he would have received if he was receiving allowance under the compensation Act. However, to do the claimant substantial justice and having in mind the possibility of his losing his present employment, and in view of the testimony of a physician in the case that the loss of efficiency in the arm of the claimant is not more than 40% at this time and that it will eventually recover. It is therefore considered by the court that the claimant be allowed the sum of $500.00.

(No. 767—Claimant awarded $2000.00.)

EDGAR COLLARD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

MILITARY SERVICE—*when State liable for injury sustained by soldier.* Claimant was injured while in the discharge of his duty, as a corporal of the Illinois National Guard, under orders of his superior officer, *Held*—He is entitled to an award.

WORKMAN'S COMPENSATION ACT—*award may be fixed under provisions of.* The provisions of the Workman's Compensation Act may be taken into consideration by the court in fixing an award in cases of this character.

McLAUGHLIN & BILLMAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant is a young man 21 years old, unmarried, and it appears that there is dependent upon him for support his widowed mother and four minor brothers and sisters, and that the family is in needy circumstances.

Prior to and on September 2, 1923, the claimant was a member of the service company, 130th Infantry, Illinois National Guard, with the rank of corporal.

On the date mentioned he was a member on the detail of six men who were directed to engage in collecting in a truck dry garbage about the camp.

As Corporal Collard was climbing upon the step of the truck, it moved forward, crushing him between the truck and a telephone pole, and caused injury, which is the base of his claim.

There appears to be no contention on behalf of the State as to the fact of the occurrence of the accident or the fact that it occurred while the claimant was in line of duty, the only contention being the extent of the damages of injury sustained by the claimant.

It appears that the claimant suffered a fracture of the left femur at the junction of the middle and upper third, and it is further claimed that the fractured bones made a union in malposition, with an overriding of the fragments, causing an anterior-posterior deformity, causing, it is claimed, a shortening of the left leg and impairment of function characterized in a limp.

It appears that the injury caused the claimant and is causing him considerable pain and discomfort.

In making allowance in this case, the court, in following its precedent in other cases of this character where employees were injured while in various employment in behalf of the State, and that considering the Workmen's Compensation Act, it appears to the court that there is not more than 50% disability, but the court wishes to also consider the medical requirements that might be necessary for the aid of the claimant and will have that in mind in making an allowance.

It is considered by the court that an allowance of $2000.00 be recommended.

(No. 784—Claimant awarded $1500.00.)

GUIDO MATTEI, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

CONTRACT—*when State is not liable.* The State is not liable for supplies, articles or musical instruments furnished by an employee, of its institution, out of his own funds for use in such institution, or for loss of same.

SOCIAL JUSTICE AND EQUITY—*award may be made—reimbursement.* While there may be no legal liability against the State for the loss of instruments used by its employees in its institution, yet as an act of social justice and equity an award may be made to reimburse claimant for such loss.

JOHN L. WALKER, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a case commenced by plaintiff, Guido Mattei, by John L. Walker, his attorney, setting forth that on to-wit: September 20, 1914, the plaintiff was engaged by defendant as bandmaster at its institution, located at No. 1900 Collins street, in the City of Joliet, in the county and State aforesaid; that said plaintiff has been employed as said defendant's bandmaster at its said institution continuously since that date and has had under his charge the supervision and teaching of music there; that the musical library of said defendant's institution became inadequate, and there being extreme difficulty in replenishing same in order to keep it in first class condition, for the progress of those in said institution band, said plaintiff as bandmaster purchased from time to time, out of his own

salary, music and musical instruments, with the knowledge, consent and acquiescense of said defendant, to-wit:

A musical library valued at approximately	$1500.00
One Pathe talking machine	102.00
75 double faced records	225.00
One snare drum	35.00
One silver clarinet mouth piece	15.00
One rubber clarinet mouth piece	5.00
One Oliver typewriter	49.50
One music brief case	7.50
Total	$1940.50

That it became necessary to increase the music library in order to properly teach and supervise music for the benefit of the inmates of defendant's institution, on account of the band at said institution being divided by the transferring of part of it to the new prison of said defendant in Lockport township, in county and State aforesaid; which was also placed under the care and supervision of plaintiff as bandmaster; that no additional State appropriation having been provided for this purpose, said plaintiff kept adding to and augmenting his own said library at his own expense and out of his own salary, in order to keep the bands in the two said defendant's institutions from falling into arrears and depreciating as bandmen, and to keep them foremost in the United States of America, as the greatest of their kind; that defendant's duly authorized agents were in possession and control of said institution at Joliet, and it was mutually agreed between defendant's agents and plaintiff that said plaintiff's musical library as augmented from time to time and said plaintiff's instruments that he had also purchased should be kept, stored and sheltered in said institution as they were in daily use, and said plaintiff then and there permitted his said library and his said musical instruments aforesaid, and the said defendant's agents had the possession, care, custody, control and complete supervision of it, and said plaintiff's library was burned at said institution at Joliet, when fire broke out there on January 31, 1924, which completely destroyed said library and musical instruments.

The Attorney General filed a demurrer in this case, which, as a matter of law, is sustained.

It is stipulated and agreed by and between the parties in above entitled cause that the affidavits of Dio Moreno, New-

ton H. Gerhardt, and Guido Mattei may be considered as evidence on behalf of plaintiff, as fully as if affiants had appeared and testified and their testimony had been taken in the form of depositions. It is further stipulated and agreed between the parties as follows: It is hereby stipulated and agreed, by and between the claimant above named, by John L. Walker, his attorney, and the State of Illinois, by Edward J. Brundage, Attorney General, that the evidence to be taken on behalf of the claimant herein in support of and of said claim shall be taken before Herbert P. Folkers, a notary public, at room 506, James G. Heggie building, in the City of Joliet, Illinois, on July 7, 1924, at 1:30 P. M., and continuing from day to day until completed. It is further stipulated and agreed that said deposition when completed shall be returned by said Herbert P. Folkers, notary public, to Louis L. Emmerson, Secretary of State, and ex-officio secretary of the Court of Claims, by mail, in a sealed envelope bearing his endorsement and the title of the case, and reciting that it contains the said deposition. It is further stipulated that all statutory requirements with references to notice of the taking of said deposition herein in said order are waived and that said deposition shall be taken pursuant to this stipulation and may be read in evidence on behalf of the claimant in the above entitled cause with the same effect as though taken with all statutory requirements complied with, subject only to such objections as go to the materiality and competence of the evidence.

The evidence shows that the claimant, Guido Mattei, is a resident of the City of Joliet, and that he was employed as bandmaster in the Illinois State Prison at Joliet and had been so employed for twelve years past; that he had charge of the musical library at this penitentiary and that he purchased out of his own wages the musical library which was destroyed by fire, as shown by the evidence, together with other personal property; that said musical library was of great value.

While the State of Illinois is not liable, still we believe that as a matter of equity and good conscience, the claimant should be awarded a sum sufficient to repay him for the musical library destroyed.

We therefore award the claimant the sum of $1,500.00.

(No. 796—Claimant awarded $727.44.)

LUNA B. THOMPSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

PROPERTY LOSS—*when award may be made to State employee for.* **This case is similar to that of *Underwood* v. *State, supra*, and the decision of the court there announced governs this claim.**

R. O. CLARIDA, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This is a suit brought by Luna B. Thompson, claimant, for loss of goods in the fire which occurred in Chicago State Hospital December 16, 1923, and may be called a companion case with No. 152 of George B. Underwood, in which opinion was filed April, 1925, along with this opinion.

The facts are identical in the two and other cases. Claimant was in the employ of the State in said hospital at time aforesaid when the annex was burnt, in which claimant, without fault on her part, lost all her wearing apparel, trunk, goods and chattels, which form the list filed, seem to be a reasonable amount for an employ to have on hand under the contract of her employment. The prices seem reasonable, and a full bill of particulars, with prices are filed, amounting to $727.44.

The facts seem, in equity and good conscience, to justify the claim. We accordingly award claimant the sum of $727.44.

(No. 808—Claimant awarded $300.00.)

DAVID MARCELIUS UPCHURCH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

RESPONDEAT SUPERIOR—*doctrine not applicable to the State.* Under the doctrine of *Respondeat Superior* the State is not liable for injuries sustained by its employees while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* While the State is not liable, an award may be made to an injured employee, as a matter of social justice and equity.

K. C. RONALDS, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover compensation for injuries to the claimant while employed as a gardner for the Watertown State Hospital. It appears that while in the course of his employment he jumped from a wagon and broke his left leg above the ankle.

As a matter of law, the demurrer filed by the defendant should be sustained, but as a matter of social justice and according to the position heretofore taken by this court, that employees of the State should have the same benefits that would accrue to them under the Workmen's Compensation Act, were they employed by private corporations.

It appears from the record that the injury occurred on October 9, 1922, and that, according to the custom of the department under which he was working, he was allowed a month's salary. Therefore, his compensation should only begin November 9, 1922. He was paid $75.00 per month, with room and board, by the State, and before he was employed by the State he received not to exceed $1200.00 per year. It appears to the court that he ought to be allowed a compensation for about six months.

It is therefore ordered that the claimant be allowed the sum of $300.00.

(No. 815—Claim denied.)

ELTON C. ARMITAGE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

FEES AND SALARIES—*when state not liable—reinstatement of employee.* The State is not liable for the salary of an employee, who upon leave of absence without pay, is refused reinstatement by the authorities under whom he previously worked.

JURISDICTION—*when court will not take.* The court will not take jurisdiction in cases that effect the discretion of authorities in other branches of the Government.

EARL W. WILEY, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

In the statement of claimant it appears that he was appointed to a position as deputy state fire marshal about November 1, 1920, and passed a civil service examination for that position. The claimant further states that about February 1, 1923, claimant applied for a leave of absence without pay for six weeks on account of alleged physical ailments, and same was granted, and about March 15, 1923, he asked for an extension of such leave for six months longer, expiring September 15, 1923, and at about that time he applied for reinstatement, which was apparently refused, and claimant presents his claim to this court for two months' salary.

The Attorney General comes in behalf of the State and files a demurrer, and as a matter of law it is the opinion of the court the demurrer should be sustained. In a further discussion of the facts in the case, it appears that the claimant sought redress to the State's Civil Service Commission and also to the State Fire Marshal, and it is evident to the court that these authorities, having full knowledge of all the facts and circumstances, did not consider it proper to reinstate claimant, and it appears to this court that this court should not take jurisdiction in questions that would effect the discretion of the authorities of any particular branch of the State government, and from all the facts before the court it is of the opinion that even considering the case on its merits, relief should not be granted to the claimant in this case.

Therefore it is considered by this court that said claim be denied and dismissed.

(No. 820—Claimant awarded $792.00.)

GEORGE TEMPLE & ARTHUR R. TEMPLE, Partners, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

SALES—*when State liable.* The State is liable to refund the purchase of hogs sold by it to claimant when the animals are infected with contagious and infectious disease.

IUNGERICH & CHAPMAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for a loss arising out of a purchase of hogs from the University of Illinois by the claimants.

It appears that the defendant maintains and operates a department of animal husbandry as a part of Agricultural Experiment Station in connection with the University of Illinois, situated in Urbana, in Champaign County.

It appears that said institution carried on experiment matters and kept hogs for experimental purposes or otherwise.

It is claimed that a lot of twenty-five hogs were sold to the claimants by the authorities of such university, paying therefor $160.00; that claimants afterwards purchased eighty-one hogs, paying therefor $792.00; that this latter lot of hogs were infected with "flu," a contagious and infectious disease of swine.

It is further alleged that agents at such university knew of the diseased condition of the hogs.

The defendant appears and objects to the allowance of this claim.

The claimant also claims damages on account of loss of other hogs, feed, etc.

The court is of the opinion that to go beyond the question of eighty-one hogs sold, that would get into the realm of speculative damages.

However, from all the evidence, the court is of the opinion that the hogs were not well, that is, the bunch of eighty-one last sold to claimants were sick and should not have been sold. Therefore, the court recommends an allowance of the sum of $792.00, which is an allowance on account of the eighty-one hogs last sold.

(No. 829—Claimant awarded $2500.00.)

ROY E. SEDEWARFT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

MILITARY SERVICE—*when claimant entitled to award.* Where a member of the Illinois State Militia is injured while in the performance of his duty, under orders from his superior officer, an award may be made to him for the injuries sustained.

ROY E. SEDEWARFT, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LERCH delivered the opinion of the court:

This is a case filed by Roy E. Sedewarft, a private in Battery "E," 202nd Artillery (Anti-Air Craft), stationed and encamped at Camp Custer, Michigan, to recover damages for injury sustained while on duty, and in his declaration claimant avers that on July 13, 1923, he, together with other members of the Illinois State Militia, was engaged in practice firing of a certain machine gun under the command of Major Kenneth C. Seibert; that at 11:15 A. M. the order was given to cease firing and to dismount the gun; that claimant and one Alexander A. Branski were engaged in dismounting the gun; that Major Seibert heard an explosion, turned around and saw that claimant had been injured in the right hand; that his hand was over the muzzle of the gun, which was not locked, and that Branski grasped the handle of the gun and pulled it upwards, causing its discharge and his resultant injury; that injury resulted in amputation of the index finger and part of the palm of the right hand, necessitating the drawing of the thumb over against the palm and fastening same there, the injury being permanent and seriously interferring with the ability of claimant to earn a living; that at the time of the injury he was employed in a clerical capacity in a railroad office, his duties requiring writing by hand; that

he has since lost his position, as he was unable to write a reasonably legible hand; that claimant was confined for a time in a hospital at Battle Creek, Michigan, and thereafter was treated by Dr. L. C. Dubois, of 202 A. A. A., I. N. G., whose address is 5875 Broadway, Chicago; that claimant is assisting in the support of his mother, so far as he is able to; that he has only been able to secure temporary positions since his injury; that his injury has seriously handicapped him for manual or clerical labor; that he has no profession and is probably not educated or equipped to undertake one even if he had the means to pursue an education, and claimant avers that the injury resulted while he was under order given to claimant and others to dismount the machine gun, and that said machine gun in some manner was accidentally discharged, whereby the injuries above set forth resulted.

The demurrer filed by the Attorney General is allowed as a matter of law.

Stipulation agreed upon by and between the parties recites that the transcripts of all testimony given before the board of officers at Camp Custer, Michigan, on July 13, 1923, and subsequent dates, touching the injury to Roy E. Sedewarft, and which includes the testimony given by Major Kenneth C. Seibert, Captain George F. Mundt, First Lieutenant Arthur Hoag, Sergeant Charles F. Harrell, witnesses Gaffney, Lafquist, Branski, Wolfe, Burt, Hoag, Block, claimant, Roy E. Sedewarft, and others may be considered in evidence before the Court of Claims in lieu of depositions, together with all other documents, findings, date and information now contained in the files of the adjutant general of the State of Illinois, in so far as the same, or any part of it, may pertain to the injury sustained by said claimant and to a correct and just disposition of the claim of the said Roy E. Sedewarft against the State of Illinois.

It appears from an amended declaration filed herein that claimant has been paid $30.00, and that an additional sum of $180.00 has been paid to claimant on September 4, 1924.

The court further finds that the board of officers who considered the case recommended that claimant be paid the sum of fifty dollars per month for a period of fifty months, and found the degree of disability suffered by claimant to be 50%; that subsequently the board amended their report and recommended that claimant be paid the sum of two hundred dollars in cash and the further sum of fifty dollars per month until

the matter could be considered by the Court of Claims, and we find that said sums of $30.00 and $180.00, respectively, have been paid claimant.

We accordingly award to the claimant the sum of $2,500.00.

(No. 831—Claimant awarded $801.15.)

GEORGE B. UNDERWOOD AND LEAH UNDERWOOD, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

PROPERTY LOSS—*award may be made to State employee.* Where the property of a State employee is lost by fire at a State institution, such employee may be awarded compensation for the loss, as a matter of social justice and equity, although no liability exists against the State for the loss.

GEORGE B. UNDERWOOD, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimants, George B. Underwood and Leah Underwood, his wife, file their claim for damages in the sum of $801.15 for loss of their clothing, wearing apparel and household goods and chattels, burned and destroyed by fire at the Chicago State Hospital December 26, 1923.

Claimants were in the employ of the State at said hospital at and a long time before the fire, and occupied quarters in the said building. The goods lost were necessary for a proper equipment of their rooms so occupied by them. The origin of the fire, so far as the evidence discloses, is unknown to claimants or defendant, and without fault on part of any of the parties. It was a very disastrous fire, destroying a number of lives of the inmates, much personal property and partially destroying the building. Claimants were not in the room containing their goods at time of the fire, but were about the premises engaged in their usual daily duties for the State, and it was impossible to save the goods, as disclosed by the evidence. The claimants had no attorney to present their claims, and taking evidence was conducted by Mr. George W. Dixon, Assistant Attorney General.

A bill of particulars was filed, itemizing all the articles lost, their original cost-prices and a fair cash present value

at time of their destruction by fire. The claim is verified by the oaths of claimants, and corroborated by the evidence of other witnesses.

While it has been often held by this court that the State is not legally liable in such cases, yet in the interest of social justice and equity, we are of the opinion that the entire demand should be allowed.

We accordingly award claimants the sum of $801.15.

(No. 840—Claim denied.)

EARL M. HOAGLIN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

GOVERNMENTAL FUNCTION—*division of highways—state not liable.* The State in the construction, maintenance and patrolling of its State Highways, exercises a governmental function and is not liable for the negligence of its agents or employees.

PAUL W. GORDON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This case comes before the court on a declaration filed by Earl M. Hoaglin, claimant, by Paul W. Gordon, his attorney, and makes a claim against the State of Illinois for the sum of $5600.00; and for cause for his claim, shows that some time prior to July 12, 1924, the State of Illinois had constructed a certain highway, commonly known as a hard road, through Henderson county, Illinois, which said highway was designated, by the Division of Highways of the Department of Public Works and Buildings of the State of Illinois, as Route Eight of the hard roads system of Illinois; that in the construction of said highway it was necessary to construct certain culverts under the same for the purpose of carrying off surface waters; that one of said culverts was constructed at a point south of the Village of Gladstone, Illinois, and at a distance of approximately two miles from said Village of Gladstone; that in constructing said culvert the said Highway Division did not make allowance for flood waters, or for any surface waters in excess of the normal flow, and said culvert was not of adequate size to carry off any unusual

flow of such surface waters; that, during the first part of said month of July, there had been heavy rains, in consequence of which large amounts of surface waters were discharged from the hills surrounding said culvert, and said culvert was inadequate to carry off said waters; that in consequence of the inadequate size of said culvert a large part of said highway was washed out and carried away by the said waters, leaving a gap in said highway of approximately ninety feet in width; that said gap in said highway constituted a dangerous condition, and that such dangerous condition continued for a long space of time, to-wit: until August 1, 1924; that the State of Illinois, recognizing the dangerous condition of said highway, and the peril in which persons using said highway were placed by reason thereof, hired a watchman to patrol the west end of said gap and to warn all travelers on said highway of the danger; that on, to-wit: July 12, A. D. 1924, at to-wit, 11 o'clock P. M., claimant was driving a certain Studebaker touring car east on said highway, traveling at a reasonable rate of speed, to-wit: twenty miles per hour, and that he was entirely unaware of the dangerous condition of said highway; that, as he approached the west end of said gap or break, no warning was given him, and there were no signs or lights to warn him of the defective condition of said highway; that no watchman was on duty; that the night was dark and claimant could not see said break in the pavement on said highway until his automobile had approached so near to the same that it was impossible to stop said automobile, and that same plunged over the embankment and crashed into the flood waters below; that said automobile was almost completely wrecked, and that the actual cost of having automobile repaired was $700.00; that claimant's head was cut open to such an extent that the doctor was required to place 18 stitches in the wound thus caused; that his ear was partially torn from his head; that one of his ribs was broken and his lung punctured by said broken rib; that his leg was injured and wearing apparel ruined; that he lost two months' time and was forced to discontinue work for two months because of said injuries, that the actual pecuniary loss suffered by claimant amounts to $5600.00.

Demurrer filed by Attorney General is allowed as a matter of law.

Stipulation agreed to by and between the parties hereto, by their respective attorneys, provides that evidence be taken

on behalf of claimant before Martha E. McCullough, a notary public, at room 103, in the First National Bank building, in Galesburg, Illinois, on February 9, 1925, at 10 o'clock A. M., and continuing from day to day until completed; that such depositions be returned to Louis L. Emmerson, Secretary of State and ex-officio clerk of the Court of Claims, by mail in a sealed envelope, bearing the endorsement of the title of the case and reciting that it contains said depositions; that evidence need not be subscribed by the witnesses, and that the certificate of the notary public and her notarial seal when placed on said depositions will be sufficient to admit them in evidence.

It appears from the evidence that at the place of this washout a barricade had been placed by the State, and was located there at the time of the accident; that on each side of the washout at a distance of approximately five hundred feet were erected and in place warning signs, cautioning users of the road of the danger existing. There is a conflict in the evidence as to whether a red lantern, lighted, was in place on the barricade; the three occupants of the car in which claimant was riding testifying that no such lantern was placed on the barricade, and there being an affidavit of one Louis Hoffman, who states that he passed said washout between the hour of 11:30 and 10 P. M., on the night of the accident, and that at the time he passed this washout a lighted red lantern was in place on the barricade.

The demurrer filed on behalf of the State of Illinois, the defendant, sets up the fact that the State is not liable because the doctrine of *respondeat superior* is not applicable to the State, and this rule has been upheld in previous decisions of this court. In an action to recover for personal injury on the ground of negligence in the defendant, the burden of proof is upon the plaintiff to establish either that he himself was in the exercise of due care or that the injury was in no degree attributable to any want of any ordinary care on his part. Testimony showing that claimant's car skidded about sixty feet from the place where the accident occurred, tends to show that he was not in the exercise of due care and caution. The testimony of one Ward Gibson, who testified that he passed the washout in question about 7 o'clock that same evening and repassed the same place again the same evening about 11 or 12 o'clock P. M., and that a lantern showing a

red light was hanging on this barricade, visible for about a quarter of a mile; the testimony given by John Stevens, and Theodore Bonderer, both employees of the State, to the effect that all necessary precaution had been taken to warn people from danger who might be using the highway at this place, all tend to show that the State had used due care and caution in guarding against danger at this point.

We do not feel that this is a case which justifies the granting of an award, and the claim is disallowed.

(No. 847—Claimant awarded $1790.93.)

PAULINE DOHN RUDOLPH, EXECUTRIX OF THE ESTATE OF FRANKLIN RUDOLPH, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

INHERITANCE TAX—*when claimant entitled to refund.* Where an inheritance tax has been assessed and paid under protest, and upon appeal and hearing thereon, and the tax is re-assessed and a lesser amount is found to be due the State, claimant is entitled to a refund of the difference between the amount of the tax paid under the original order of the court and the amount found to be due upon appeal.

MILLER, GORHAM, WALES & NOXON, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant, Pauline Dohn Rudolph, is executrix of the last will and testament of Franklin Rudolph, late of Cook County, deceased. On June 27, 1923, an order was entered by the county judge of said county fixing the total tax due the State from said estate at the sum of $51,981.73, less 5% statutory deduction—$2599.08—or a net total of $39,724.62. Claimant thereupon appealed from said order of the county judge of the county court, from the order appraising the taxable share of claimant individually at said sum.

On June 28, 1923, claimant, under protest, paid the said net sum, being the total tax assessed against all the legatees. The Union Trust Company also appealed from an order assessing a tax of $10,032.98 against the interest of the Union Trust Company as trustee for the will of Franklin Rudolph, deceased, to-wit: Pauline Dohn Rudolph, Frank Dohn Rudolph and Charles Dohn Rudolph, under certain trusts exe-

cuted by decedent in his lifetime, which the State of Illinois claimed were gifts in contemplation of death, etc. These appeals were perfected July 17, 1923, and heard in court July 29, 1924; and thereupon the court entered an order re-appraising the total tax due the State at $39,930.21, minus 5% discount of $1996.51, or a net tax of $37,933.70, showing that claimant had thus overpaid tax to the amount of $1790.93, and the judge entered an order that she was entitled to a refund of said sum.

The Attorney General, after examining the evidence submitted by claimant, says that she was entitled to the amount claimed as refund. The court finds that the evidence on file supports claimant's declaration and claim, and accordingly mitted by claimant, says that she was entitled to the amount awards claimant the sum of $1,790.93.

(No. 849—Claim denied.)

ELTA M. CARTER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

NON-LIABILITY OF STATE—*not liable for injury sustained by attendant at State Fair.* The State is not liable for an injury sustained by an attendant or visitor at its State Fair, notwithstanding such attendant or visitor paid an entrance or admission fee.

LEFORGEE, BLACK & SAMUELS, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a suit brought against the State of Illinois where the claimant, a resident of Decatur, Illinois, alleges that she attended the Illinois State Fair at Springfield on September 16, 1924, and that she paid the usual admission fee for entrance to the grounds and buildings of said Fair. That on the morning of said day, while she was walking from the Fine Arts building into an adjoining hall known as Machinery Hall, she tripped and fell off of a step-off to the floor, thereby breaking the surgical neck of the right femur, commonly called the hip, and as a result of such accident the claimant alleges that she was permanently injured and compelled to lay out large sums for hospital expenses, bills, etc., and that

she was exercising due care for her safety when the accident occurred. It does not appear in the evidence any denial as to the happening of the accident, but there is considerable difference as to whether or not the claimant was exercising proper caution at the time and whether or not there was proper and sufficient light to permit the claimant to view the hazards of the situation. It does, however, appear to the court that at a place like the State Fair, which is described in the records and otherwise well known, that it would be incumbent upon any person on going out of the building or going into another, that they would watch their step more particularly than if they were passing over the floor inside a building, and, as stated by defendant in their brief and argument, "that a step in the doorway leading from one building to another having a height of about four inches, is certainly not a dangerous agency in itself." The court, in viewing the defendant's exhibit "I," purporting to be a photograph of the door from the Fine Arts Building in the Machinery Hall, is of the impression that the situation at the door in question must be similar to other steps and entrances throughout the State Fair grounds over which hundreds of thousands of people must travel while the fair is in session, and while an accident of this kind is regrettable, this court feels that to establish a precedent in making allowance in a claim of this kind that the bars would be let down to permit the entrance of a vast number of claims against the State of Illinois that would mean a heavy burden upon the taxpayers.

It is further the opinion of this court that there is a grave question whether or not this court would have the power under the law to make allowance in a case of this kind even if the facts justified such an allowance in a case between individuals or private corporations. However, it is the opinion of the court that, taking all the facts under consideration and after consideration of the brief and argument of both parties, an award should not be made in this case.

Therefore it is considered by the court that claim be denied.

(No. 852—Claimant awarded $3250.00.)

ILLINOIS POWER & LIGHT CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

FRANCHISE TAX—*when claimant entitled to refund.* Where there has been a consolidation of corporations, and a franchise tax is afterwards levied and assessment made upon each corporation consolidated, and paid, and at the time of payment one of the corporations was not in existence, claimant is entitled to a refund of the tax paid on the non-existent corporation.

HENRY I. GREEN, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant, the Illinois Power & Light Corporation, a corporation, by Henry I. Green, its general solicitor, files its declaration herein, setting forth that it has a lawful claim against the State of Illinois; that the claimant is a corporation organized under the laws of the State of Illinois; that claimant is engaged in the ownership and operation, among other things, of divers and sundry public utility properties in the State of Illinois, and was formerly organized as a merger or consolidation of eighteen predecessor Illinois public utility corporations, among which was a public utility corporation known and designated as Southern Illinois Light & Power Company; that pursuant to the annual report, filed in the month of February, 1923, with the Secretary of State of the State of Illinois, by said Southern Illinois Light & Power Company, there was levied and assessed the sum of $3,250.00 as and for franchise tax for the year 1923, against said Southern Illinois Light & Power Company, based upon an authorized capital stock of said corporation of six million five hundred thousand dollars; that on the 25th of May, 1923, being the date of the consolidation of the above mentioned eighteen public utility corporations into the Illinois Light & Power Corporation, the claimant herein issued its voucher No. 54149 to Louis L. Emmerson, Secretary of State, as follows:

Organization fee	$30,937.65
Advance franchise tax	41,250.20
Total	$72,187.85

Claimant further says that said payment of franchise tax on said date by said claimant herein, as above stated, was in payment of the unexpired part of the year 1923, as outlined in the statutes of the State of Illinois, and was inclusive of any and all franchise taxes which might be due from the consolidating corporations, among which was the Southern Illinois Light & Power Company; it would therefore appear that the consolidated corporations should not have paid their individual annual franchise tax for the year 1923 to the State of Illinois, in view of the fact that the consolidation and merger of the above mentioned public utility corporations into the Illinois Power & Light Corporation took place prior to July 1, 1923, being the due date for payment of annual franchise taxes to the State of Illinois.

The amount of $3250.00 was paid to the State of Illinois by said Southern Illinois Light & Power Company, erroneously, to the Secretary of State of the State of Illinois.

The Attorney General of the State of Illinois files a statement wherein he advises the court that the Secretary of State has informed him that there was not in existence a Southern Illinois Power & Light Company at the time said fee was paid, and that the State is not entitled to said sum of $3250.00, said statement being signed by Edward J. Brundage, Attorney General.

It is evident that the State of Illinois was erroneously paid the sum of $3250.00, which, as a matter of law, it was not entitled to receive.

As a matter of equity and good conscience, the court finds that said claimant is entitled to an award or refund of the amount of $3250.00.

The court therefore awards the claimant the sum of $3,250.00.

(No. 857—Claimant awarded $597.07.)

ILLINOIS STATE JOURNAL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

CONTRACT—*when State liable for supplies furnished.* The State is liable for printing, supplies and work furnished it at the request of an authorized Department of State.

WILL H. MCCONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed by the Illinois State Journal, claimant, sets forth that on April 5, 1923, the Department of Public Works and Buildings, Division of Printing, State of Illinois, issued order No. 85581, to the Illinois State Journal for the following: Print and Bind: 1000 copies annual report of the Illinois Beekeepers' Association, 22nd Annual Report, 32nd Annual Meeting, size 6x9, bind in red cloth, English finish; order signed by the Superintendent of Printing, H. L. Williamson; that above work was finished and delivered to the State of Illinois, Division of Beekeepers' Association during the month of June, 1923; bill for this work made in triplicate and delivered to the department for payment; that the Beekeepers' Association overlooked paying this account and that the funds available were turned back to the treasury; that the price for said work was at the regular contract price and that the State of Illinois on account thereof is justly indebted to claimant in the sum of $597.07.

The Attorney General of the State of Illinois filed herein his consent to the payment of award as follows: The Attorney General has had this case investigated by the Superintendent of the Division of Printing, in the Department of Public Works and Buildings. The information furnished the Attorney General is that on April 5, 1923, an order was given, No. 85581, directed to the claimant, authorizing the printing and binding of one thousand copies of said report; said report was printed and delivered to A. C. Baxter, president of said association on or about July 12, 1923, and on July 19, 1923, the Superintendent of the Division of Printing approved the invoice of the claimant and forwarded same to the Illinois

Beekeepers' Association to be vouchered and on August 21, 1923, the Superintendent of the Division of Printing received voucher No. 69 from said Beekeepers' Association and same was forwarded to the Department of Finance for payment but through an error the said bill was not paid and the appropriation therefor lapsed. The facts show the claimant to be entitled to the amount alleged in the declaration and the Superintendent of the Division of Printing assures the court that the bill is correct and that an award should be made.

The court therefore awards the claimant the sum of $597.07.

(No. 862—Claimant awarded $14,476.22 with interest.)

LUCILE HIRSCH HILBORN AND MILTON S. HIRSCH, EXECUTORS AND TRUSTEES OF THE ESTATE OF ISAAC HIRSCH, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

INHERITANCE TAX—*when refund will be made, Sec. 25.* Where upon proper proceeding an estate is re-appraised and the tax re-assessed and the tax reduced, claimant is entitled to a refund of the difference between the amount of the tax paid under the original order and the amount found due upon the re-assessment.

SIMEON STRAUS AND IRA E STRAUS, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This suit is brought by Lucile Hirsch Hilborn and Milton S. Hirsch, executors of the last will and testament of Isaac Hirsch, deceased, to recover $14,476.22 refund of inheritance taxes under provisions of Sec. 25, Inheritance Tax Laws of Illinois.

The evidence is clear and undisputed in this case and admitted by the Attorney General, who consents to an award of the amount claimed, and our statement will be brief.

September 5, 1923, claimants paid the assessed inheritance tax assessed, to amount of $51,187.23.

On 31st day of December, 1924, the county court, on proper petition, entered an order for re-appraisement and re-assessment as to the one-third of the residuary estate held for the

benefit of Lucile Hirsch Hilborn, the petitioner therein, and on a proper hearing, the court entered its order assessing the same in sum of $39,405.07 and found that the petitioner was entitled to have returned the difference between the original assessment and the last order re-assessing same, to-wit: the sum of $14,476.22 with interest at 3% per annum from September 5, 1923.

The Attorney General was notified of this procedure and made no objection to the re-assessment, etc. It is never necessary in deciding these inheritance tax cases to go further back of the orders and findings of the court on the petition for re-appraisement and re-assessment. Certified copies of the orders and findings of the county court are filed in evidence and the Attorney General admits that upon an examination of the evidence, the claimants are entitled to the sum of $14,476.22.

(No. 864—Claimant awarded $766.85.)

FLORENCE H. CLOUGH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

PROPERTY LOSS—*award may be made to State employee.* This case is similar to that of *Underwood* v. *State, supra*, and the decision of the court in that case governs this claim.

FLORENCE H. CLOUGH, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This is a claim filed by Florence Clough against the State for household goods, wares and clothing, lost by her while in line of duty as an employee of the State, by fire on the 16th day of December, 1923, when the Annex of Chicago Hospital at Dunning was destroyed by fire. The facts and evidence are identical with that in case No. 831 of *Underwood* vs. *State*, opinion filed in April, 1925, and it is unnecessary to reiterate them.

The articles lost are minutely itemized, and prices seem fairly reasonable. The State is at disadvantage in getting evidence in its defense in cases of this character, and we must depend largely on the credibility of claimants and the apparent reasonableness of the prices shown.

Claimant's proven losses amount to $766.85, which sum we award to her for same reasons stated in the Underwood case.

(No. 869—Claimant awarded $138.84 with interest.)

WILLIAM N. JOHNSON, JR., EXECUTOR OF THE ESTATE OF WILLIAM N. JOHNSON, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

INHERITANCE TAX—*claimant entitled to refund. Sec. 25.* Where upon proper proceedings an order of court is made directing a re-assessment of the tax under Sec. 25, Inheritance Tax Law, and it appeared upon the hearing in such proceeding that the estate is not subject to the tax, claimant is entitled to a refund of the tax paid.

H. WARD HEIDENRICH, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This is a suit by William Johnson, executor of the estate of William N. Johnson, deceased, for refund of inheritance taxes under Section 25 of the inheritance tax laws of Illinois, in the sum of $138.84. The deceased, domiciled in Chicago, Illinois, died January 3, 1918, leaving a last will and testament, and William N. Johnson, Jr., was appointed executor, who, with his sister, Margaret Blackman, were the only children and his only heirs-at-law left surviving. November 27, 1918, the county judge of Cook County entered an order fixing the amount of inheritance taxes in said estate at $138.84, which was paid February 19, 1919, and was the correct amount under the assumption that prevailed at the time.

January 13, 1925, on proper petition to the county court, an order was entered directing a re-assessment and re-distribution. The Attorney General had notice of this proceeding and consented to the last order. Amongst other things, the court found that claimant herein was entitled to a refund of the said sum of $138.84. Certified copies of executor's letters of executorship and orders of the county court all filed as evidence.

The Attorney General consents to the award claimed. Ordered by this court that claimant be paid a refund of $138.84, with 3% interest per annum from February 19, 1919.

(No. 870—Claimant awarded $832.25 with interest.)

EMANUEL BUXBAUM, HENRY KUH AND MYRA C. ELLENBOGEN, TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF ABRAHAM KUH, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

INHERITANCE TAX—*when claimant entitled to refund. Sec. 25.* Where an order of court has been made, in a proper proceeding, re-assessing the tax under Sec. 25, Inheritance Tax Law, upon the happening of certain contingencies provided for in the will, claimant is entitled to a refund of the difference between the amount of the tax originally assessed and the amount found due under the order of the court re-assessing the tax.

MERWIN M. HART, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

Emanuel Buxbaum, Henry Kuh and Myra C. Ellenbogen, trustees under the last will and testament of Abraham Kuh, deceased, bring this action for refund of inheritance taxes paid on account of the operation of Section 25 of the inheritance tax laws of Illinois.

It appears from the declaration and the statement and consent of the Attorney General that in this estate there was paid to the State of Illinois, on account of the property, subject to the operation of said Section 25 of the inheritance tax laws of Illinois, a net tax of $9886.67, whereas, under an order re-assessing said property after the happening of the contingencies provided for by said will, it was found that the net tax should be $9054.42, thereby leaving, as found by order of the court, the sum of $832.25 to which claimants are entitled to have refunded, with 3% interest per annum from the 16th day of April, 1917. The Attorney General consents to an allowance of the amount claimed, which is proven by the evidence in the case.

The court accordingly awards the claimant the said sum of $832.25 with interest.

(No. 871—Claimant awarded $5,808.10 with interest.)

ADELE V. HARRIS WHITING, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

INHERITANCE TAX—*when claimant entitled to refund. Sec. 25. Appeal.* Where an appeal has been taken from an order of court assessing the tax under Sec. 25, Inheritance Tax Law, and upon a re-hearing of the appeal the court finds that the tax should be reduced by reason of the termination of the trust provided for in the will, claimant is entitled to a refund of the difference between the tax paid under the order of court on appeal and the amount found due upon the re-hearing of the appeal.

CONTINENTAL AND COMMERCIAL TRUST AND SAVINGS BANK, for claimant.

OSCAR E. CARLSTROM, *Attorney General*; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant, Adele V. Harris Whiting, files this claim for refund of inheritance tax under Section 25 of the Inheritance Tax laws of Illinois.

Elinor S. Harris, a resident of Cook County, Illinois, died in Chicago September 25, 1916, leaving a last will and testament, which was duly probated in said county, and Graham H. Harris and Bradford Whiting were appointed and qualified as executors.

January 2, 1917, the county judge entered an order fixing the inheritance tax at $43,530.89, from which order an appeal was taken to the county court, and on hearing the court found that the report of appraisers and the order entered thereon were erroneous in the deductions allowed to the appellant, the sum of $40,811.30 had been paid under the original assessment and order so erroneously made and entered March 20, 1917. On the re-hearing the court found that by reason of the termination of the trust provided for in said will, that the correct amount of inheritance tax as shown by the re-assessment was $35,003.20, leaving the sum of $5808.10, with interest thereon at the rate of 3% per annum from March 20, 1917, to which the claimant is entitled to have refunded.

The Attorney General consents, in writing, to a claim for claimant in the said sum of $5808.10, and the court accordingly, from the evidence and such consent, awards to claimant the said sum of $5808.10, with 3% interest from March 20, 1917.

(No. 872—Claimant awarded $825.28.)

FIRST TRUST & SAVINGS BANK OF PEORIA AS TRUSTEE OF THE ESTATE OF ALEXANDER S. PAYSON, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

INHERITANCE TAX—*when claimant entitled to refund. Sec. 25.* There being no dispute as to the facts in this case, and no objection by the State, the court enters an award to claimant for the difference between the amount of the tax paid by legatees, under Sec. 25, Inheritance Tax Law, and the tax assessed against them under the supplemental order entered by the county court.

IRWIN & JACK, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant, First Trust and Savings Bank of Peoria, as trustee of the estate of Alexander S. Payson, deceased, filed this claim, seeking a refund on account a finding on a re-assessment of the inheritance tax under Sec. 25 of the Inheritance Tax Laws of the State of Illinois. It appears from the evidence that Alexander S. Payson, late a resident of Peoria county, State of Illinois, departed this life about November 7, 1914, testate, and on the 16th day of February, 1915, the will of deceased was duly admitted to probate. The will is quite lengthy and duly certified copies of same, and all orders, appraisements, etc., are filed in evidence herein.

The court deems it unnecessary to set out in its opinion in detail the provisions of the will, but to simply show the finding and order of the county court on petition for re-assessment and refund of inheritance taxes.

It happens that the tax upon the bequests of Benjamin Sewel Blake and Agnes Blake Fitzgerald was upon bequests which were conditional in their nature, and which would lapse and become a part of the residuary estate of said deceased on certain contingencies.

The total amount of inheritance taxes so assessed against the interests of these two legatees was $1213.43.

A supplemental order was subsequently made in which the county court found that the amount of such taxes against the said last named legatees should only be $388.15, thus

leaving the sum of $825.28 refund to which claimant in its official capacity with interest thereon at 3% per annum from April 16, 1915, was entitled.

The Attorney General consents to an award to claimant in the sum claimed. The court accordingly awards claimant the sum of $825.28.

(No. 873—Claimant awarded $249.70.)

JACOB SCHREPFER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

RE-IMBURSEMENT—*when award may be made to State employee.* There exist no liability against the State to re-imburse its employees for moneys expended by them in the defense of a suit brought against them for a tort or wrong committed by them in the performance of their duty.

SAME—*award may be made on grounds of social justice and equity.* An award may be made to a State employee to re-imburse them for moneys expended in their defense of a proceeding brought against them for an alleged tort or wrong, as a matter of social justice and equity.

JACOB SCHREPFER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

Claimant, Jacob Schrepfer, who was an appointee of the State as game warden in the Fish and Game Division of the Department of Agriculture, in April, 1921, learning that one Harry Sanford was violating the Fish and Game Laws of the State by having out and in use nets after the expiration of the time for so catching fish, took ten of Sanford's nets and carried them out on land and never disturbed the nets further. He prosecuted Sanford, who was found not guilty. Sanford claimed that claimant took other nets not above stated and sued him for value of same in county court.

The suit terminated in the jury giving a judgment against claimant in sum of $5β2.50, which on motion of defendant's counsel was set aside.

It being a jury case, it was thought very doubtful, in view of the action of the jury in the foregoing case, whether the State officers could ever succeed in the case; and under the advice of claimant's attorney and the officer representing the Fish and Game Department the suit was settled by claimant

paying the plaintiff in the said suit the sum of $150.00, and Francis C. Voucher $50.00 attorney's fees for his services in looking after the interests of the State's officers in the suit; court costs in the case $44.70 and Grace E. Sweney for stenographic work $5.00, making a total of $249.70. Claimant thus settled the suit, on advice of his and his associate's attorney, and on advice of an officer legally representing the Fish and Game Department.

While the finding of the jury might, at first blush, be taken as proof that the claimant had taken other nets other than those accounted for, yet the idea is dispelled from the fact that the court set aside the verdict and gave a new trial.

It is thus evident that the jury was wrong and claimant was sustained in his contention in the defense. But counsel and the officer representing the Fish and Game Department thought it would be much more expensive to further litigate the case than it would be to pay a small sum and thus end the matter. The jury, they saw, was evidently prejudiced against the State.

Claimant acted under the advice of his attorney and his superior officer and paid it; and from all the facts and evidence in the case, we are inclined to think it was about the best settlement that could be made under the circumstances.

The Attorney General submitted the matter to the Warden of Fish and Game Department and he replied recommending the payment of the claim as equitable. He exonerates claimant, as he was acting under advice of his attorney and his superior officer.

From the evidence there is no legal claim made out against the State; but in the interest of social justice and equity, we will and do award claimant the sum of $249.70.

(No. 876—Claimant awarded $244.26.)

FRANK SCHMANIA, EXECUTOR OF THE ESTATE OF LORENZ SCHMANIA, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

INHERITANCE TAX—*when claimant entitled to refund. Sec. 10.* Where an inheritance tax has been erroneously paid under an order of the county judge, and an appeal is taken to the county court and upon a hearing thereon, it is shown that the tax was paid under an erroneous order of the county judge: *Held*, claimant entitled to a refund of the tax erroneously paid, under Sec. 10, Inheritance Tax Law.

E. H. WEGENER, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant, Frank Schmania, executor of the estate of Lorenz Schmania, deceased, brings this suit for a refund of inheritance tax erroneously paid under Section 10 of the inheritance tax law in the sum of $244.26, which amount was paid by an erroneous order of the county judge.

An appeal was in due time taken to the county court, and on proper hearing at which the Attorney General was represented the county court reversed the order and ordered the said sum, so erroneously paid, refunded.

The evidence supports the claim, which is likewise admitted by the Attorney General in this case, who consents to an award for the sum so erroneously paid.

An award in the sum of $244.26 to claimant.

(No. 882—Claimant awarded $177.60 with interest.)

ALICE MAY WARNER AND CLIFFORD R. FRENCH, EXECUTORS OF LAST WILL AND TESTAMENT OF MARY M. WARNER, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

INHERITANCE TAX—*Claimant entitled to refund. Sec. 25.* When an inheritance tax has been assessed and paid under Sec. 25. Inheritance Tax Law by reason of the happening of certain contingencies mentioned in the will, and the estate is re-assessed upon a proper proceeding and upon a hearing it appears by the removal of the contingencies the estate is not liable to the tax: *Held*, Claimant entitled to a refund of the tax paid.

BURKE, JACKSON & BURKE, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This action is brought by the executors of the last will and testament of Mary M. Warner, deceased, who died testate in Cook County, Illinois, December 16, 1915, and her will admitted to probate in said county February 1, 1916.

May 20, 1916, paid the inheritance taxes in said estate in the sum of $439.28 net, and on March 31, 1917, the said estate was declared settled, the executrix discharged.

By reason of the happening of certain contingencies named in will and shown in the proof herein, it became necessary to make a re-assessment under Section 25 of inheritance tax laws of Illinois. By removal of certain contingencies, the estate became freed from liabilities to pay such tax, as was found by order entered by the county court, and claimants are therefore entitled to recover such taxes so paid, under Section 25 aforesaid.

The Attorney General consents to the same. We accordingly award claimants the sum of $177.60, with 3% interest per annum from the 20th day of May, 1916.

(No. 890—Claimant awarded $2,604.37.)

PENINSULAR STOVE CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

FRANCHISE TAX—*Refund when paid under mistake of fact. No liability.* Where the franchise tax has been paid through a mistake made by claimant in its annual report, the State is not liable for a refund of the tax paid, although paid under protest.

SOCIAL JUSTICE AND EQUITY—*award may be made.* An award may be made to claimant for refund of a franchise tax paid under a mistake of fact, on grounds of equity and social justice.

PRINGLE & TERWILLIGER, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant, Peninsular Stove Company, a corporation, files its declaration herein setting forth that the State of Illinois is indebted to said claimant in the sum of $2,604.37, same being for refund of franchise tax, due to mistake of fact in said claimant's annual report for 1923. The State of Illinois, by Oscar E. Carlstrom, demurs to the declaration, which, as a matter of law, is sustained.

From the stipulation of facts agreed upon, between the parties hereto, by their respective attorneys, it appears that the following shall be taken and considered by the court as the facts of the case, to the same extent as if proved by evidence produced before the court:

1. The claimant, the Peninsular Stove Co., is a corporation organized under the laws of the State of Michigan, and has its principal office and factory in the City of Detroit, in the State of Michigan; the said corporation, during and previous to the year 1922, and continuously since that time, has complied with all the laws of the State of Illinois in relation to the right of a foreign corporation to transact business in the State of Illinois, and was and is authorized to transact business in the State of Illinois; on and subsequent to June 1, 1922, it maintained and operated in the City of Chicago, in the said State, a warehouse for the distribution of its products in the City of Chicago and adjacent territory.

2. On or about the 27th day of February, 1923, the claimant filed with the Secretary of State of Illinois its annual

report as a foreign corporation, in accordance with the laws of the State of Illinois, relating to the determination and assessment of annual franchise taxes; in its said annual report, through the inadvertence and mistake of fact of the employee of the claimant in preparing said report, it was stated erroneously in answer to interrogatory 6 of said report, that the authorized capital stock of the claimant was 300,000 shares of stock of no par value, but the truth is that said claimant did not at said time, and never has had any shares of capital stock of no par value. The authorized capital stock of the said claimant in 1922, and at all other times since, was $3,000,000.00, divided into 300,000 shares of the par value of $10.00 each.

3. By reason of the mistake of fact of the claimant's employee in making up the said annual report, the Secretary of State of Illinois, in determining and assessing the claimant's annual franchise tax for the year 1923, found and considered from the said annual report that the total authorized capital stock of the claimant, computing the said 300,000 shares of stock of no par value at $100.00 per share, amounted to $33,000,000.00, and on the basis of such erroneous authorized capitalization, fixed and assessed claimant's annual franchise tax at the sum of $1686.46, and further fixed and assessed an additional initial incorporation fee on an alleged additional $2,193,110.00 of its capital stock employed in the State of Illinois, such additional fee amounting to $1,086.55.

4. The claimant never in fact employed in the State of Illinois more than $1,199,820 of its authorized capital stock. It had previous to 1922 duly paid to the Secretary of the State of Illinois the proper initial incorporation fee on the said portion of its authorized capital stock employed in the State of Illinois. The finding of the Secretary of State of Illinois of an additional $2,173,110.00 of the capital stock of the claimant employed in Illinois was due to the mistake of fact of the claimant's employee hereinabove mentioned; the claimant was not in fact indebted to the State of Illinois in any further sum on account of initial fees on its capital stock employed in the State of Illinois.

5. The correct and legal annual franchise tax of the claimant for the year 1923, based on its actual authorized capital stock of $3,000,000.00 and upon the proportion thereof actually employed in the State of Illinois was $168.64.

6. The claimant filed correct annual reports for the years 1920, 1921 and 1922, and the franchise taxes assessed thereon in said years, respectively, were $369.31, $316.03, $316.03.

7. The claimant did not discover the said mistake of fact in its annual report until on or about the 26th day of July, 1923, on which date it made complaint to the honorable Secretary of the State of Illinois against annual franchise tax and additional initial fee assessed against it by the Secretary of State under and on the said report, and requested the said Secretary of State to review and correct the said taxes and fees, but the said Secretary of State was at that time without authority in law to review and make any change in the said assessments, and the said Secretary of State so advised the said claimant, and thereupon the said Secretary of State demanded of the claimant the immediate payment of the said entire tax and initial fee so erroneously assessed and determined against the claimant, and threatened that if the same were not paid by July 31, 1923, the penalties provided by the laws of the State of Illinois for non-payment of such taxes and fees would be inflicted upon and collected from the claimant.

8. The claimant had reason to believe, and did believe, that the Secretary of State would inflict or cause to be inflicted upon claimant the penalties provided by law for non-payment of such taxes and fees, if it did not pay the same on or before July 1, 1923, and thereon on the 31st day of July, 1923, in order to escape the said threatened penalties, the claimant paid, under protest, to the Secretary of State of Illinois, the amount of said annual franchise taxes and additional initial fee, amounting together to the sum of $2,773.01.

9. The said sum of $2,773.01 so paid under protest by the claimant to the said Secretary of said State of Illinois was by him afterwards duly paid into the treasury of the State of Illinois.

10. The claim of the claimant herein has never been presented to any other State department or State officer, or to any person, corporation or tribunal, and the claimant has never received any payment on account of its claim for such overpayment of said annual franchise taxes and additional initial fee; no other person or corporation has any interest in its said claim.

11. The sum so paid by the claimant to the Secretary of State of Illinois for said annual franchise tax and additional

initial fee, due to the mistake of fact in its said annual report for 1923, amounted to the sum of $2604.37 over and above the correct and legal annual franchise tax of the claimant for the said year of 1923.

The court finds that, as a matter of equity and social justice, an award should be made in this case, and it therefore awards the claimant the sum of $2,604.37.

(No. 897—Claimant awarded $119.08.)

MERCHANTS TRANSFER AND STORAGE CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

CONTRACT—*when State liable.* Where work has been performed for the benefit of the State, and is accepted by the State, claimant is entitled to an award for the amount of its claim.

MERCHANTS TRANSFER AND STORAGE CO., for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for the handling of the statues of ex-Governors Palmer and Yates from a spot south of the Centennial building to their present permanent site. It appears that the work has been done and that the balance claimed by claimant is just as the defendant, through its Attorney General comes into court and consents to its allowance.

It is therefore considered by the court that the claim amounting to $119.08 be allowed.

(No. 899—Claimant awarded $7,500.00.)

ILLINOIS CENTRAL RAILROAD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

SERVICES—*when State liable.* **Where services have been rendered for the State at the request of its authorized Department, an award may be made to claimant for such services.**

J. G. DRENNAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed by the Illinois Central Railroad Company on account of the failure of the State to pay claimant the sum of $7,500.00, according to the terms and conditions of a certain opinion and order of the Illinois Commerce Commission of the State of Illinois. It appears to this court that the matter has been fully adjudicated by the said Commission, and it further appears that the defendant, by its Attorney General, comes into this court on his own motion and admits that said demand is justified; that said sum should be paid the claimant.

Now therefore it is considered by this court that said claim be allowed and it is recommended that the claimant be allowed the sum of $7,500.00.

(No. 24—Claimant awarded $10,009.39.)

MORRIS & COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

QUARANTINE—*re-hearing. Claim allowed. Social justice and equity.* **The court upon reconsideration of the case enters an award in favor of claimant on the ground of social justice and equity.**

MORRIS & COMPANY, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This case comes before the court again, on a motion to reopen above captioned case, and reconsider the former decision

rendered as of September 17, 1923, in which the court held that the Statute of Limitations had run against said Morris and Company as of November 18, 1924, and that as a matter of fact, the Statute of Limitations started to run as of December 19, 1921, the company received $10,009.39 from the Federal November 18, 1914, Morris and Company a corporation, owned 8,714 range feeder cattle at their distillery barns at Peoria, Illinois, which cattle were, on that day, quarantined by Dr. O. E. Dyson, State Veterinarian, pursuant to an Act in relation to the suppression and prevention of contagious or infectious diseases among domestic animals, approved June 14, 1909, in force July 1, 1909, L. 1909, page 8; that 952 of these cattle were slaughtered and tanked, and the company by an appropriation of the 49th General Assembly, Laws of 1915, page 131, received $38,032.40, after a similar amount had been paid to the company by the Federal Government; on December 19, 1921, the company received $10,009.39 from the Federal Government, being one-half of the loss as determined by the Federal Government on the 7762 remaining cattle ordered slaughtered, and that on September 13, 1922, the company filed its petition in the Court of Claims in the State of Illinois, asking that its claim of $10,009.39 be approved.

The Attorney General of the State of Illinois has filed an answer stating that the Statute of Limitations began to run against claimant on December 19, 1921.

In view of the stand taken by the Attorney General of the State of Illinois, and upon reconsideration of the facts in the case and the law, we believe that claimant is entitled to recover from the State of Illinois the amount claimed, and we, on the grounds of equity and social justice, award claimant the sum of $10,009.39.

(No. 28—Claimant awarded $1,921.87.)

MUDGE & COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*refund when erroneously paid.* Where a franchise tax has been erroneously paid the court may upon grounds of social justice and equity award a refund.

SIMS, WELCH, GODMAN & STRANKSY, for claimant.

EDWARD J. BRUNDAGE, Attorney General; FLOYD E. BRITTON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the recovery of franchise tax, erroneously paid to the Secretary of State of the State of Illinois, by claimant, in the years 1920, 1921 and 1922, amounting in all to $1,921.87.

Demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $1,921.87.

(No. 29—Claimant awarded $1,210.09.)

JOHN W. McDOWELL, TRUSTEE IN BANKRUPTCY OF AVERY COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*refund when erroneously paid.* The court may as an act of social justice and equity award claimant a refund of a franchise tax erroneously paid.

HUNTER, PAGE & KAVANAUGH, for claimant.

EDWARD J. BRUNDAGE, Attorney General; FLOYD E. BRITTON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for refund of franchise tax erroneously paid the Secretary of State of the State of Illinois, by claimant, amounting to $1,210.09.

The demurrer filed by the Attorney General of the State of Illinois is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $1,210.09.

(No. 32—Claimant awarded $350.00.)

ASKIN & MARINE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be made.* Where there was an error in the payment of the franchise tax and fees, and no objection is made by the State, the court may recommend an allowance of a refund.

NOAH GULLETT, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for refund on account of payment made in error of franchise tax and fees to the Secretary of State. The Attorney General making no objections to the allowance of the claim and it appearing to the court that the claim is just and equitable, it is recommended that an allowance of $350.00 be made to the claimant.

(No. 700—Claimant awarded $22,635.05.)

WESTERN ELECTRIC COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*tax erroneously paid, when refunded.* Upon review of the evidence the court upon the grounds of social justice and equity awards a refund to claimant the amount of the tax erroneously paid.

CUTTING, MOORE & SIDLEY, for claimant.

EDWARD J. BRUNDAGE, Attorney General; FLOYD L. BRITTON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the refund of franchise taxes erroneously paid to the Secretary of State of the State of Illinois, by above claimant, in the amount of $22,635.05.

The demurrer filed by the Attorney General of the State of Illinois is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $22.635.05.

(No. 711—Claimant awarded $8,787.50.)

HERENDEEN MILLING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be awarded.* Although there may be no legal liability on behalf of the State, the court may as an act of social justice and equity award a refund of the tax erroneously paid.

JOHNSON, MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim to refund certain portions of franchise taxes paid erroneously to the Secretary of State of the State of Illinois by above claimant, in the years 1921, 1922 and 1923, total excess tax paid amounting to $8,787.50.

The demurrer filed by the Attorney General of the State of Illinois is, as a matter of law, sustained.

On the grounds of social justice and equity, we award claimant the sum of $8,787.50.

(No. 712—Claimant awarded $1,250.00.)

ROBERT VAN BATSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

GOVERNMENTAL FUNCTION—*when State not liable.* The State in conducting the Southern Illinois State Penitentiary exercises a governmental function and is not liable for injuries sustained by its employe therein while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* Where it appears that an employee of the State was injured while in the discharge of his duty, an award may be made to him as a matter of social justice and equity.

JUDSON E. HARRISS, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant, Robert Van Batson, on the 12th day of August, 1918, an employe as a guard in the Southern Illinois Penitentiary, while in the employment of the defendant, State of Illinois, and in line of his duties and without any negli-

gence on his part, was attacked by a vicious inmate or prisoner of said State Institution, and struck on the head by said prisoner with a heavy iron spittoon, inflicting great bodily injuries that are evidently permanent. The facts are very fully set out in the declaration and supported by ample uncontradicted proof; and are, briefly stated, about as follows: The convict, Johnson, was paroled for a time, and not being well behaved, he was arrested and the State authorities at S. I. P. requested to take him back to prison. Van Batson, claimant, was given orders and empowered to go arrest and bring the said prisoner back to prison. Johnson, it is shown by the evidence, was a mean, rather vicious fellow, and Van Batson asked permission to take a gun for his entire safety; but was denied one and sent out to get the convict and fetch him in.

The claimant got the prisoner and a sheriff who had imprisoned the negro, handcuffed him and got aboard the cars and started back to the prison with him; and at an unguarded moment the prisoner grabbed up a heavy iron cuspidor and with lightning speed struck claimant a terrific blow on his head, about the back of the head and above the ear, inflicting an ugly wound, rendering claimant unconscious and helpless for a long period of time. The prisoner got away, but was in a few hours killed while resisting arrest. The blow on the head and back of the left ear caused a slight brain concussion and paralysis of the nerve leading to the ear. Amongst other troubles and liabilities, it caused claimant to be deaf in left ear. He was carefully examined by surgeons and specialists and treated for the injuries. Dr. Leo Steiner of the Illinois Eye and Ear Infirmary of Chicago examined the left ear and found that claimant was entirely deaf in left ear as a result of said injury. As a result, claimant was unfitted for his work at prison and gave up the job and went back into the employ of the Illinois Central R. R. Co., for which he had worked for many years before he became a prison guard. He files a bill of particulars, as follows:

For maintenance at home of I. C. Batson	$ 25.00
Nursing	40.00
R. R. Taxi fare	16.00
Attending physician on trip	5.00
X-Ray Photo of Skull	5.00
Dr. Mitchell	2 00
Dr. Smith	2 00
Total Expense	$ 95.00

The State paid the remainder of the bill and expenses and kept him on his regular salary during his two weeks' illness and until his voluntary resignation in October, 1918, same year he was injured. He went back and secured the same employment he had worked at prior to his going to the prison and getting employment. The evidence is clear that his hearing in the left ear is permanent, but no other physical permanent disabilities are disclosed which would interfere with his employment. He seems to have gotten back the same job of work with the R. R. Co. he had before he left and went to the S. I. P. for employment. His deafness is a partial handicap to his working capacity. The extent is not shown and it is difficult for the court to guess at it. While, in such cases as this, the court has held that the State is not, as a matter of law, liable, yet as a matter of social justice, equity and good conscience, the claimant should be compensated for the very serious, permanent, total loss of the hearing in his left ear.

We accordingly recommend that the legislature appropriate the sum of $1,250.00 as compensation to claimant.

(No. 713—Claimant awarded $631.00.)

A. C. CLARK & CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*refund may be made.* This case is similar to that of *Herenden Milling Co. v. State, supra,* and the decision of the court there announced governs this claim.

BULKEY, MOORE & TALLMADGE, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

MR. JUSTICE LEROY delivered the opinion of the court:

This is a claim for the recovery of franchise tax amounting to $631.00, erroneously paid to the Secretary of State of the State of Illinois in the year 1921.

The demurrer filed by the Attorney General of the State of Illinois is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $631.00.

(No. 714—Claimant awarded $5,700.00.)

FANSTEEL PRODUCTS CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund awarded.* This case is similar to that of *Herenden Milling Co.* v. *State, supra,* and the decision of the court there announced governs this claim.

LEVINSON, BECKER, SCHWARTZ & FRANK, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the recovery of franchise tax erroneously paid the State of Illinois in the years 1920, 1921 and 1922, amounting in all to $5,700.00.

Demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $5,700.00.

(No. 715—Claimant awarded $1,122.58.)

GEORGE C. PETERSON CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be awarded.* This case is controlled by the decision of the court in *Herenden Milling Co.* v. *State, supra.*

JOHN A. BUSSIAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for refund of certain portions of franchise taxes erroneously paid by above claimant to the Secretary of State of the State of Illinois, for the years 1920, 1921 and 1922, total excess tax paid amounting to $1,122.58.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $1,122.58.

(No. 716—Claimant awarded $750.00.)

VIOLA SMITH MONDHINK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

GOVERNMENTAL FUNCTION—*State not liable. State Hospital Jacksonville.* The State is not liable for injuries sustained by its employees while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* When it appears that claimant at the time of the injury was engaged in a hazardous employment, the court may enter an award to her as an act of social justice and equity.

WORKMAN'S COMPENSATION ACT—*may be basis of award.* The rules and regulations of the Workman's Compensation Act may be taken into consideration in fixing compensation awarded to claimant.

FRANK M. RAMEY, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This case comes before the court on a declaration filed by Viola Smith Mondhink, claimant, which alleges that on July 24, 1922, claimant was in the employ of a certain institution, in the possession of, and operated by the State of Illinois, known as the Jacksonville State Hospital, located at Jacksonville, Illinois, which institution was managed and controlled for the purpose of caring for certain insane persons of the State of Illinois, and among said insane persons there was a certain patient named Fern Cameron, who was a dangerous charge of said institution; that on said day she was unmarried, her name at that time being Viola Smith, that she afterwards, on October, 1922, married Mr. Perley Mondhink; that on the date first above mentioned she was employed by the State as a nurse in said institution, and that as such it was her duty to work in and about what is known as the "Hydro Room" at said institution; that while she was engaged in what is known as "packing" certain patients of said institution, said Fern Cameron attacked claimant, and struck her over the head with a stone water pitcher and hit her about the face and head with such force as to break said water pitcher; and also struck her a violent blow on the left forearm, causing a severe cut and wound to the plaintiff on the left fore-arm, the scar being of about three inches in length; that she was confined in a hospital for about three weeks, and that

she has undergone great pain and become highly nervous as a result of said attack.

The demurrer filed by the Attorney General of the State of Illinois is allowed, as a matter of law.

The testimony of claimant, and that of her physician, Dr. Z. V. Kimball, also the testimony of Dr. Thomas G. McLin, assistant managing officer, Dr. H. A. Chapin, and Dr. Trippeer, has been carefully examined, and while there is no liability on the part of the State of Illinois to make an award in this case, as a matter of social justice and equity, we feel that an award should be made, owing to the fact that claimant was injured while in the employ of the State, and that the compensation should be figured according to the rules and regulations practiced under the Workmen's Compensation Act and we accordingly award to said claimant the sum of $750.00.

(No. 718—Claim awarded $237.50.)

KENNEDY OIL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be made.* This case is controlled by the decision of the court in the case of *Herenden Milling Co.* v. *State, supra.*

BROWN, HAY & STEPHENS, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the refund of franchise taxes erroneously paid to the Secretary of State of the State of Illinois by claimant, in the years 1921, 1922 and 1923, amounting in all to $712.50.

The Demurrer filed by the Attorney General of the State of Illinois is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $237.50.

(No. 719—Claimant awarded $28,041.34.)

AMERICAN BRAKE SHOE AND FOUNDRY COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*refund for overpayment may be awarded.* Where there is an overpayment, under protest, of a franchise tax and initial fees by a corporation, the court may on grounds of social justice and equity enter an award in favor of claimant for the overpayment. (*Isco Co. v. State*, 4, C. C. Rep. 171.)

WHITMAN & MILLER, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This case comes before the court on declaration filed by claimant, in which it alleges that in the year 1920 it paid to the State of Illinois the sum of $6302.75, under protest, for franchise tax claimed to be due from it by the State of Illinois on 400,000 no par value shares of common stock; that said sum was unlawfully collected from claimant by the Secretary of State of the State of Illinois; overpayment of franchise tax for the year ending June 30, 1921, $6324.91; overpayment of franchise tax for year ending June 30, 1922, $7438.88; overpayment of initial fee for 1921, $1136.13; overpayment of franchise tax for the year ending June 30, 1923, $6,838.67; making a total overpayment of initial fees and franchise taxes made by claimant to the Secretary of State of Illinois, under protest and duress, of $28,041.34.

The demurrer filed by the Attorney General of the State of Illinois is sustained, as a matter of law.

On the grounds of social justice and equity, we award claimant the sum of $28,041.34.

(No. 721—Claimant awarded $1,560.00.)

SOCIETY FOR VISUAL EDUCATION INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when award will be made for refund.* This case is controlled by the decision of the court in *Alfred Decker & Cohn, Inc.* v. *State.*

BROWN, HAY & STEPHENS, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the recovery of $1560.00 franchise tax erroneously paid the Secretary of State of the State of Illinois in the years 1921 and 1922.

The demurrer filed by the Attorney General of the State of Illinois is sustained, as a matter of law.

On the grounds of equity and social justice, we award claimant the sum of $1560.00.

(No. 730—Claimant awarded $4,250.00.)

ALFRED DECKER & COHN INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund will be made. Tax illegally assessed.* Where the franchise tax has been illegally assessed by the Secretary of State, and is paid, the claimant is entitled to a refund of the difference between the amount of the tax illegally paid and the amount of the tax legally due the State.

JOHNSON, MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This case comes before the court on declaration and amended declaration, filed by claimant in above entitled cause, to recover moneys paid to the Secretary of State under duress as and for its franchise taxes for the year beginning July 1, 1921, and ending June 30, 1922, in excess of the amount

legally due to the State under the provisions of the General Corporation Act. Declaration sets forth that the total authorized capital stock of $4,000,000 was divided into 25,000 shares of preferred stock of the par value of $100 per share and 100,000 shares of common stock without nominal or par value, which was issued and paid for in full in property of the appraised value of $1,500,000 at the time of the organization of the corporation, all of which is fully set forth in the charter of claimant on file in the office of the Secretary of State of the State of Illinois; that the subscription list copied into and forming a part of the application and charter of this corporation showed that all the authorized capital stock was subscribed for, the par value preferred stock being subscribed for at $100 per share and the common stock without nominal or par value being subscribed for at $15 per share; that said charter and the application therefor showed said subscriptions and the names of the subscribers and that the entire amount of the stock was subscribed and paid for in cash and property; that between the first day of February and the first day of March, 1921, it duly executed and filed in the office of the Secretary of State the annual report required by law, and in said report set forth that it was willing to be assessed and to pay a franchise tax upon all of its authorized capital stock and also that its total authorized capital stock consisted of preferred stock in the amount of $2,500,000 and 100,000 shares of no par value common stock, as appears by said report on file in the office of the Secretary of State; that prior to May 15, 1921, Louis L. Emmerson, Secretary of State of the State of Illinois, sent to it a written notice, wherein the claimant was notified to pay as and for its franchise taxes for the year beginning July 1, 1921, the sum of $6250, stating that the same was computed upon the authorized capital stock and setting forth the penalties provided in the Genearl Corporation Act and hereinafter set forth, stating that said penalties would be imposed upon the claimant unless said tax was paid on or before July 31, 1921; that said notice further set forth that the tax was reckoned at the rate of five cents per one hundred dollars upon the authorized capital stock, consisting of $2,500,000 of preferred par value stock and 100,000 shares of no par value stock, making a total of $12,500,000; and claimant alleges that in arriving at said total of the authorized capital stock the Secretary of State considered each share of no par value to be of the par value of $100 a share and hence

assessed the total authorized capital stock of this corporation at $12,500,000, instead of $4,000,000, and computed the tax rate upon said former figure; that there was no authority in law for the Secretary of State to make such assessment and that its authorized capital stock should have been assessed as of the sum of $4,000,000, and that the tax should be computed upon that figure at the rate of five cents for each one hundred dollars, and that upon such computation its proper tax should have been $2000 instead of the sum of $6250.00, as set forth in said notice; that on July 25, 1921, it paid to the State of Illinois, by payment to Louis L. Emmerson, as Secretary of State for the State of Illinois, the sum of $6250.00, and claimant alleges that the sum of $4250.00 of the moneys so paid was not legally due to State of Illinois under the statute imposing said tax and that the Supreme Court has since decided that the assessment of franchise taxes by the Secretary of State against corporations upon a figure derived by assessing each share of no par value stock as though it were of the par value of $100 a share was erroneous and not authorized by the statute, and that the Supreme Court further decided that the Secretary of State should assess the corporation upon the total amount of its authorized capital stock as shown by its charter, whether the authorized capital stock was divided into shares of par value or shares of no par value, and that the total amount of authorized capital stock means the total sum of money necessary to be paid into the treasury of the corporation to secure the issuance of the total number of shares of stock authorized by the articles of incorporation, and claimant alleges that said sum of money necessary to secure the issuance of all the shares of stock authorized by its articles of incorporation was $4,000,000; that it was induced to make said excessive payment of $6,250.00, of which $4,250.00 was not legally due, by means of duress and through fear that the State of Illinois would enforce the statute and impose the penalties provided in the statute applying to corporations which fail to pay their franchise taxes; that the statutes of the State of Illinois provided a penalty of 5% per month for each month, beginning with August, during which the tax remained unpaid; that the statute further authorized the Secretary of State to cause the personal property of the delinquent corporation to be seized and sold for the payment of the tax; that the statute provided that all contracts made by the corporation while delinquent in the payment of such tax

should be unenforceable and that no action could be maintained upon them either at law or in equity; that the statute further provided that the tax should be a lien upon both the real and personal property of the corporation until paid and directed the Attorney General to file an information in equity against the delinquent corporation for the dissolution of the corporation. In the amendment to its original declaration claimant asks damages in the total sum of $6,250.00, setting forth that the General Corporation Act imposing said franchise tax is unconstitutional.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

We note that one of the grounds of complaint in each of the franchise cases which have come up for hearing is that the Secretary of State, in computing the amount of the authorized capital stock of each of the claimants, took the total amount of the authorized capital stock represented by the par value shares and added to it a sum derived by multiplying the number of no par value shares authorized by one hundred; the total of these two sums he took as the total amount of the authorized capital stock and computed the tax in each instance on that sum. He had no authority in law to do this, but should have taken the issue price of the no par shares and multiplied it by the number of no par shares and added that result to the total par value of the par shares. The State has collected this money without right, and we, in equity and good conscience, award claimant the sum of $4,250.00, the amount paid in excess of that which it was legally responsible for under the General Corporation Act.

(No. 731—Claimant awarded $1,178.11.)

H. W. GOSSARD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund awarded.* This case is controlled by the decision of the court in the case of *Herenden Milling Co.* v. *State, supra.*

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim to recover the franchise taxes erroneously paid to the Secretary of State of the State of Illinois, by the

above named claimant in the years 1921 and 1922, the excess tax paid by claimant amounting to $1,178.11.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

We award claimant above named the sum of $1,178.11, on the grounds of equity and social justice.

(No. 732—Claimant awarded $3,800.00.)

H. CHANNON COMPANY, A CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when will be awarded.* This case is controlled by the decision of the court in *Herenden Milling Co.* v. *State, supra.*

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD E. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the refund of franchise taxes erroneously paid to the Secretary of State of the State of Illinois, by above claimant, in the years 1920 and 1921; total excess paid by claimant amounting to $3,800.00.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of social justice and equity, we award claimant the sum of $3,800.00.

(No. 734—Claimant awarded $1,214.75.)

NATURES RIVAL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund will be awarded.* This case is controlled by the decision of the court in the case of *Herenden Milling Co.* v. *State, supra.*

MORAN, PALTZER & O'DONNELL, *for claimant.*

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the refund of franchise taxes erroneously paid to the Secretary of State of the State of Illinois, by

above named claimant, in the years 1921 and 1922, total excess paid by claimant amounting to $1,214.75.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $1,214.75.

(No. 735—Claimant awarded $5,000.00.)

BRENNAN PACKING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund will be awarded.* This case is controlled by the decision of the court in *Herenden Milling Co. v. State, supra.*

MORAN, PALTZER & O'DONNELL, *for claimant.*

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for refund of franchise taxes erroneously paid to the Secretary of State of the State of Illinois, by above named claimant in the year 1921, in the amount of $5,000.00.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of social justice and equity, we award claimant the sum of $5,000.00.

(No. 736—Claimant awarded $3,000.00.)

LOUISE WILSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

PERSONAL INJURY—*when State liable for injury to inmate.* An award may be made for injuries sustained by an inmate of a State Institution where the injury was caused by the negligence of an attendant.

T. W. SMURR, for claimant.

OSCAR E. CARLSTROM, Attorney General; A. E. CAMPBELL, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed by an inmate of the Kankakee State Hospital for the Insane about March 15, 1922. In a former

presentation of this case it appeared that the injuries complained of were caused by a fellow patient, but on a subsequent hearing it appeared to the court that the injury complained of was occasioned by a nurse employed in said hospital, who closed a window so violently and suddenly that the glass fell out and injured the eye of the patient. According to the rule of this court an award would not be justified in a case where the injury was sustained through the action of a fellow patient. However, in a case where the injury complained of appears to be through the negligence of an attendant it would appear that a liability on the part of the State would prevail. The loss of an eye is very serious, not alone by reason of the loss of sight but the great pain and sorrow would also be an element to consider.

Upon reconsideration of this case it is the opinion of the court that an allowance be made the complainant. Therefore it is recommended that the claimant be allowed the sum of $3,000.00.

(No. 740—Claimant awarded $6,768.33.)

ORANGE CRUSH COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be awarded.* This case is similar to that of *Herenden Milling Co.* v. *State, supra,* and the decision there announced governs this case.

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the refund of franchise taxes erroneously paid to the Secretary of State of the State of Illinois, by claimant, in the years 1921 and 1922, amounting in all to $6,768.33.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant, the sum of $6,768.33.

(No. 739—Claimant awarded $5,896.64.)

INDEPENDENT PNEUMATIC TOOL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund awarded.* This case is similar to that of *Alfred Decker & Cohn, Inc.* v. *State, supra,* and the decision of the court in that case governs this claim.

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the recovery of franchise taxes erroneously paid to the Secretary of State, of the State of Illinois, in the years 1921, 1922 and 1923, amounting in all to $5,896.64.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $5896.64.

(No. 741—Claimant awarded $4,275.00.)

VESTA BATTERY CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be made.* This case is similar to that of *Herenden Milling Co.* v. *State, supra,* and the decision of the court in that case governs this claim.

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for refund of franchise taxes erroneously paid to the Secretary of State of the State of Illinois, by above claimant, in the years 1920 and 1921, in the total sum of $4275.00.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of equity and social justice, we award above claimant the sum of $4275.00.

(No. 742—Claimant awarded $9,266.96.)

VICTOR CHEMICAL WORKS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be made.* This case is similar to that of *Herenden Milling Co.* v. *State, supra,* and the decision of the court in that case governs this claim.

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for refund of portion of franchise taxes erroneously paid by above named claimant to the Secretary of State of the State of Illinois, in the years 1921 and 1922, total excess tax paid amounting to $9266.96.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $9266.96.

(No. 746—Claimant awarded $3,993.34.)

BALABAN & KATZ INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be made.* This case is similar to that of *Herenden Milling Co.* v. *State, supra,* and the decision of the court in that case governs this claim.

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the refund of franchise taxes erroneously paid to the Secretary of State of the State of Illinois, by the above named claimant, in the years 1920 and 1921, amounting in all to $3993.34.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $3993.34.

(No. 749—Claimant awarded $3,502.50.)

CHANNEL CHEMICAL COMPANY, A CORPORATION (Changed to) O'CEDAR CORP'N, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be made.* This case is similar to that of *Herenden Milling Co.* v. *State, supra,* and the decision of the court in that case governs this claim.

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for refund of certain portion of franchise tax erroneously paid by above named claimant to the Secretary of State of the State of Illinois, for the year ending June 30, 1921, total excess tax paid amounting to $3502.50.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of social justice and equity, we award above named claimant the sum of $3502.50.

(No. 750—Claimant awarded $6,043.35.)

SPOEHR'S, A CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be made.* This case is similar to that of *Herenden Milling Co.* v. *State, supra,* and the decision of the court in that case governs this claim.

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the refund of franchise taxes erroneously paid to the Secretary of State of the State of Illinois, by claimant, the total amount paid in excess of tax due being $6043.35.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $6043.35.

(No. 751—Claimant awarded $3,792.25.)

WEST INDIES FRUIT IMPORTING CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be made.* This case is similar to that of *Herenden Milling Co.* v. *State, supra*, and the decision of the court in that case governs this claim.

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the refund of franchise taxes erroneously paid to the Secretary of State of the State of Illinois, by claimant, in the years 1920 and 1922, in the amount of $3792.25.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $3792.25.

(No. 757—Claimant awarded $3,562.50.)

UNITED STATES COLD STORAGE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund for overpayment may be made.* Where there has been an overpayment of a franchise tax, the court may on the ground of social justice and equity award a refund of the excess paid.

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the refund of certain portions of franchise taxes paid by above named claimant, erroneously, to the Secretary of State, of the State of Illinois, in the years 1921, 1922 and 1923, total excess paid over amount due being $3562.50.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $3562.50.

(No. 765—Claimant awarded $3,500.00.)

JAMES DENNY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

GOVERNMENTAL FUNCTION—*when State not liable. Chester State Hospital.* The State in conducting the Chester State Hospital exercises a governmental function and is not liable for injuries sustained by its employees therein while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* Where an employee of the State is engaged in a hazardous employment as a guard in the Criminal Insane Department of its State Institution and is injured while in the performance of his duty by an inmate of the institution, in the interest of social justice and equity he is entitled to an award.

J. FRED GILSTER, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

MR. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant, James Denny, brings this suit to recover for personal injuries alleged to have been inflicted July 22, 1923, while employed as a guard at the Chester State Hospital at Menard, Illinois.

The declaration alleges that the claimant at said time and place while in line of his duties was seriously stabbed and cut in the breast and lungs by an insane inmate of said institution while he was endeavoring to guard a number of such inmates who had broken out and were endeavoring to escape from the hospital. He was alone at the time and aided in the care of such inmates and but for an early interference of other guards would more than likely been killed.

After the injury was received the claimant was given every possible consideration by the State. His salary was continued at the same rate and his doctor bills were all paid. When he was hurt he was earning $104.00 per month with two meals per day furnished by the institution.

He claims that he is only able to earn $12.50 per week now in consequence of his physical disability so received.

Evidence shows that he has a wife and two children, the children are the ages of 3 years and under. He states that he has lost considerable in weight, that his color is now bad and his circulation poor and that when he contracts cold, his side pains him severely and that he does not feel nearly as good as he did six months ago. He was a carpenter before this occurred and claims that he could not perform manual labor to the same extent that he did before the injury and that he believes that his disability is from 30 to 50 per cent.

He admits that he was examined for the National Guard for the World war and he was rejected for the regular army about a year before he was employed by the State. Evidence shows that he never had any heart trouble before his rejection from the army, but that had nothing to do with his disability claims.

Dr. Max Azman said he knew James Denny before he was hurt and he was a man of good physique and that his complexion was good and that he was of robust body and he said, now he is pale and has a waxy appearance. His eyes are dull and his face is drawn.

He claims that he was called to see this man immediately after he had received the stab. He found he had been stabbed about an inch below the left nipple and the knife penetrated the pleural cavity. There was a great loss of blood and a great deal of blood entered the pleural cavity and that air also entered the pleural cavity, that he finds the pleural cavity has never cleared up of the blood and air since that time and that it is now creating a bulging in the back of the left lung, which is easily seen with the naked eye. As a result of this injury he is apt to take cold and contract pleurisy and unless there is some way to entirely overcome the condition of the pleural cavity, the result will be a shortening of his life. He further states that this condition in his opinion is permanent, also the disability might be helped by an operation, but this is by no means certain, that he looked as though he might have lost a good deal of weight. He further states that he finds the patient's breathing capacity to be abnormal in the left side and that he found by percussion that the lung has been compressed to a certain extent and is not functioning properly and that this might have a tendency toward tuberculosis.

The doctor has an opinion that the physical disability ranges from 30 to 50 per cent and that it may increase. He further states that he finds the condition advanced since the time he examined him before in December.

James Denny testified that the claimant was now much thinner than he was before he received the stab, has bad color, his shoulders are dropped, his face is thin and that he does not carry himself or walk as he did before. He claims that he is unable to climb steps as he did before. A number of other witnesses testify along about the same line as the preceding one and claim that his physical condition prior to this was good, that since this his complexion is bad, that he does not walk erect and seems much feebler than before.

Dr. Stubblefield however testifies on behalf of the State that he is the managing officer of the Chester State Hospital and that the claimant was employed there as guard and acted as turnkey, that the claimant is doing about the same duties now that he did before, that he saw him shortly after the outbreak and the infliction of this wound and that he came back to the institution on the 9th day of August, but left again on the 24th, came back again September 5th, since which time he had performed the same duties that he did prior to the injury, until December 26th, when he quit and that he did not see much difference in appearance, that he did not make much complaint to him of feeling bad.

Clyde F. Martin testifies to practically the same that the preceding witness did, and that he did not notice any difference in his physical appearance and that he performed the same labor he did before.

There is no question from the evidence but what the claimant received the injury as complained of and under the circumstances as stated and while in the line of his duty. The extent of the disability, however, from all of the evidence, is a little hard to determine with exact certainty by this court.

The Attorney General in his brief denies that the claimant is entitled to recover under the Workmen's Compensation Act and that the Workmen's Compensation Act does not apply to employees of the Illinois State Penitentiary and cites *North, Admr.*, v. *Board of Trustees, University of Illinois,* 201 App. 449, and *Carver* v. *State* of Illinois, 4 Court of Claims, 87.

It is true that the court has held this under the facts as stated in those particular cases, but in the criminal insane department of said institution the risk is more hazardous than if dealing with the ordinary inmates in the other departments of the penitentiary.

While the State might not under the former holdings of this court be liable for injuries as in this case, still in the interest of social justice and equity, we believe the claimant should receive some compensation for the disability received.

We have decided under the evidence to allow him the sum of $3,500.00 and accordingly make an award for the same.

(Claimants awarded $3,300.00.)

ALFRED W. BRUHN, 774; MARGARET E. BRUHN, 775; CAROLINE BRUHN, 776; GLADYS IRENE BRUHN, A MINOR, BY ALFRED W. BRUHN, HER NEXT FRIEND, 777, Claimants, *vs.* STATE OF ILLINOIS, Respondents.

Opinion filed May 1, 1925.

GOVERNMENTAL FUNCTION—*not liable for negligence of member of Ill. National Guard.* The State in the use of its Militia exercises a governmental function and is not liable for the negligence of a member thereof.

SOCIAL JUSTICE AND EQUITY—*award may be made.* While no legal liability exists against the State for the negligence of a member of the Illinois State Militia, yet where the circumstances of the case warrant it, the court may on grounds of social justice and equity enter an award in favor of claimant.

BARR & BARR, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

Each of the claimants above were injured in the same accident. The cases come before the court on separate declarations filed by each claimant, but in order to avoid duplications and to simplify procedure, the court has considered them together, and we will cover them in this one opinion.

From the declarations filed, it appears that the claims grew out of an accident occurring September 1, 1923, in Boone county, Illinois, when a truck being operated by a member of the Illinois National Guard collided with an automobile in which Alfred W. Bruhn, Margaret E. Bruhn, his wife, his

mother, Caroline Bruhn, his daughter Gladys Irene Bruhn were riding, the automobile being driven by the said Alfred W. Bruhn. It further appears that said claimants were proceeding in a westerly direction along a certain public highway, in Boone county, Illinois, known as "State Bond Issue Route No. 5," when the State of Illinois, acting by and through Private McMahon, a member of the 33rd Tank Company, Illinois State Militia, in the command of Lieutenant R. L. Ramsey, operating a certain motor vehicle, known as a motor truck, on said public highway, and proceeding along said highway in an easterly direction in pursuance of orders and directions of proper officials of the Illinois State Militia and of the State of Illinois, carelessly and negligently drove said truck and improperly managed same and collided with claimant's car. Claimant sets out damages to his car amounting to $800.00; and each claimant asks an award for personal damages and injuries as a result of said accident.

A demurrer to each declaration was filed by the Attorney General of the State of Illinois, which, as a matter of law, is sustained.

A stipulation entered into between each of the claimants above named, by their attorneys and the State of Illinois, by its Attorney General, provides that the taking of evidence in above cases shall be consolidated in so far as the evidence taken applies to the several cases; that additional evidence other than that heretofore taken on behalf of the several claimants herein in support of their claims, shall be taken before Everett C. Shaw, a notary public, at the office of Dr. Minor L. Hartman in Garden Prairie, Illinois, on October 16, 1924, commencing at 2:00 o'clock P. M. and continuing from time to time until completed, and when completed said evidence to be returned to the Secretary of State and *ex-officio* clerk of the Court of Claims, in a sealed envelope, bearing endorsement of Everett C. Shaw, notary public, and the title of the case, and reciting that it contains said evidence.

The claimants, Alfred W. Bruhn and Margaret E. Bruhn, appeared before this Court of Claims in person and testified, and the court examined the nature of the injuries sustained. It does not appear, however, that the infant child, Gladys Irene Bruhn, who was six months old at the time the accident occurred, sustained any injuries which would justify the allowance of an award. In each of the other cases, however, we feel that as a matter of social justice and equity, the claim-

ants should receive some compensation for the injuries sustained, and we accordingly award to Alfred W. Bruhn the sum of $1,450.00, which award includes damages done to the car he was driving; to Margaret E. Bruhn the sum of $1,100.00, and to Caroline Bruhn the sum of $750.00.

(No. 781—Claimant awarded $500.00.)

CATHERINE MAGILL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

RESPONDEAT SUPERIOR—*State not liable for torts of inmates of its institutions.* The doctrine of *Respondeat Superior* is not applicable to the State, and it is not liable for the torts of an inmate of its institution.

SOCIAL JUSTICE AND EQUITY—*award may be made.* While the State is not liable for the tort of an inmate of its institution, an award may be made to claimant on the ground of social justice and equity.

JOHN J. REEVE, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

Catherine Magill, claimant, filed her declaration in this court for claim for personal injury committed by one of the insane inmates of the Jacksonville State Hospital on the 3rd day of August, 1922.

It appears from the contradicted evidence in this case the claimant, who was about 83 or 84 years of age, resided near the state institution; that a number of the inmates of said institution were working in a field nearby where she lived. One of these inmates slipped away from the guards, went over to the residence where the old lady was alone, attacked her, inflicting considerable injury about her eyes, face, throat and other parts of her body. The claimant made outcry and the insane man was soon captured and taken back.

The maltreatment she received at that time, of course, prostrated her, and she was taken in an ambulance to the Jacksonville State Hospital, where she received treatment for more than four weeks.

The doctor's bill and all expenses were fully paid by the State, and she was kept in the hospital nearly two weeks longer, making in all six weeks when she was discharged as about recovered.

The bruised places and scars had about cleared up, but it was complained by her that her throat had never entirely gotten well. The evidence discloses further that she was always nervous, unable to do the house work as she had always done before that time for her son and his family, with whom she was living at the time.

After this she visited about amongst her sons and their families and apparently was in fair health, except that she was nervous.

About two years after the attack she died, but the cause of her death was not shown by the evidence to be a result of the injury so received.

The presumption is that she died of extreme old age. One of her sons testified that she was not able to work after the attack as she did before, but still he had never employed any help for the house, because his mother would not stand for his getting other assistance.

After her death, letters of administration were issued on her estate to Owen Magill, who, as such administrator, asked the court for leave to substitute himself as claimant and continue the prosecution of this suit. Leave was given to so prosecute.

It seems from the evidence in this case that the old lady suffered to some extent during the two years, the remainder of her life, after such attack, but a woman of her age, we believe from our experience and observance, would not be capable of rendering much manual labor for any family or for herself.

Old people at that age ought to be taken care of by their family and not have to take care of the family themselves. If she were living today, it would be the opinion of the court that she ought to be entitled to about $1500.00 for the injury received, which would only compensate her for the indignities received at the time aside from the bruises and wounds inflicted by the maniac.

The present claimant is not prosecuting the suit to recover for loss of service to the next of kin of the deceased, as that would require a new suit to do so, and even if they were, we would not be inclined to award them anything for the loss of service from the death of their mother.

We have decided to allow the claimant the sum of $500.00, and hereby accordingly award to him the said sum.

(No. 785—Claim denied.)

EDWIN O. LINDEN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

BONUS ACT—*court is without jurisdiction.* The court is without jurisdiction to consider a claim of a soldier for compensation under the Bonus act.

SAME—*Service Recognition Board.* The Service Recognition Board has exclusive jurisdiction in the consideration of claim of soldier under the Bonus act.

LEE W. CARTER, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for soldier's compensation. The State, by its Attorney General, comes and files its statement denying the legal or equitable right of the claimant and alleges that this court is without jurisdiction, owing to the fact that the intention of the bonus act was to vest the service recognition board with exclusive jurisdiction and pass upon and finally dispose of all claims filed under that act.

It is the opinion of the court that this contention is correct. Therefore, the claim is denied.

(No. 790—Claimant awarded $2,000.00.)

THE VAN DORN IRON WORKS COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be awarded.* Although there may be no legal liability against the State to refund the amount of a franchise tax paid in excess of the amount due the State, yet as a matter of social justice and equity an award may be made in favor of claimant for the excess tax paid.

DUSTIN, MCKEEHAN, MERRICK, ARTER & STEWART, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the refund of certain portions of franchise taxes paid to the Secretary of State of the State of Illi-

nois by above named claimant, total amount paid in excess of amount due being $2000.00.

The demurrer filed by the Attorney General of the State of Illinois is, as a matter of law, sustained.

On the grounds of social justice and equity, we award claimant the sum of $2,000.00.

(No. 791—Claimant awarded $650.24.)

INLAND IRON WORKS INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*refund may be awarded.* The court may award claimant the amount of the franchise tax erroneously paid, although no legal liability exists against the State, such award may be made on ground of social justice and equity.

JOHN T. BOOZ, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the refund of franchise taxes wrongfully paid to the Secretary of State of the State of Illinois, in the years 1921 and 1923, in the total sum of $650.24.

The demurrer filed by the Attorney General of the State of Illinois is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $650.24.

(No. 792—Claim denied.)

J. A. EISELE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

NON-LIABILITY OF STATE—*State not liable for negligence of its employees.* The State is not liable for the negligence of its employees.

J. E. MALONE, JR., for claimant.

OSCAR E. CARLSTROM, Attorney General; A. E. CAMPBELL, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This case comes before the court on a declaration filed by J. A. Eisele, in which he alleges that on October 27, 1922, while

driving his Packard touring car from the city of LaSalle, LaSalle county, Illinois, to Chicago, Cook county, Illinois, traveling upon the cement road known as Temporary Route 7, and at a point upon said State road about twelve miles east of the city of Morris, Grundy county, Illinois, said Packard touring car was damaged by collision with a large truck owned, controlled and used by the Department of Public Works and Buildings of the State of Illinois, in the maintenance and upkeep of State roads, and claimant alleges that accident occurred through the negligence and carelessness of the driver of said truck.

The State of Illinois, by the Attorney General, filed a demurrer, which, as a matter of law, is sustained.

From the testimony, which has been carefully examined, it appears that the driver of said Packard car, J. A. Eisele, was driving at the rate of 35 miles an hour; that it was a wet, rainy morning; that he attempted to pass the truck above mentioned, which truck was traveling at the rate of about ten miles an hour; that when he saw he was unable to pass said truck, he turned to the right and applied his brakes and that it was impossible at that time to avoid a collision. We believe that the driver of the said Packard car was guilty of contributory negligence, disregarding weather conditions, and traveling at a high rate of speed; hence the demurrer filed by the Attorney General is sustained.

(No. 794—Claimant awarded $4,500.00.)

JOHN GEBHART, ADMINISTRATOR ESTATE OF HENRY GEBHART, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

RESPONDEAT SUPERIOR—*the State is not liable for injuries sustained by its employees.* The State is not liable for injuries sustained by its employees while in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* As an act of social justice and equity, and under the circumstances in the case, the court may recommend to the legislature an appropriation to claimant.

ROLLAND M. WAGNER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant, John Gebhardt, administrator of the estate of Henry Gebhardt, deceased, brings this suit to recover com-

pensation for the death of said decedent, caused by being gored by a vicious bull.

The facts, briefly stated, are as follows:

The decedent on the 16th day of August, 1923, while in the employ of the State of Illinois in the capacity of dairyman at the Soldiers' and Sailors' Home located in Adams county, Illinois, and while in the discharge of his usual duties and without fault or blame on his part, was viciously attacked by a bull belonging to the defendant, State, and gored to death.

The evidence discloses without refutation that the bull was never known to be ill or vicious before, but on the contrary the brute was perfectly docile and gentle, a fact which would excuse the deceased from the exercise of any other than ordinary care and prudence in going about such an animal. It had never been known to attack anybody, a fact that also as a legal proposition relieves the defendant from liability for damages, as the Supreme Court has often held in similar cases.

Decedent left him surviving no widow, but eight children survived him, six of whom were under the ages of their majority, ranging from eleven to seventeen years old, who were, in a measure, dependent upon their father for support and education.

Mr. Johnson, the Assistant Attorney General, cites numerous authorities why the State is not liable in this case, all of which are in point and are decisive and are the law in this case, as we have repeatedly held, and we will not discuss the law laid down in the authorities so cited, still the court is always interested and pleased to have counsel in all cases when deemed proper, furnish the court with a brief of authorities.

However, this case is one that appeals to the sympathy of the court, and we have concluded, in the interest of social justice, equity and good conscience, to recommend, and do hereby recommend to the legislature, that it make an appropriation to claimant, John Gebhardt, administrator of the estate of Henry Gebhardt, deceased, the sum of $4,500.00, which amount we hereby award.

(No. 798—Claim denied.)

THE UNITED STATES CORPORATION BUREAU, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

PUBLICATION NOTICE—*when State not liable for.* Where publication notices are made by direction and authority of a State department compensation for same should be made out of the appropriation to that department.

WIRT E. HUMPHREY, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a case brought to recover compensation for publication notices against delinquent corporations, asking for dissolution of said corporations, total amount of claim being $1004.75, and declaration alleges that the claimant, acting by authority and direction of Samuel E. Erickson, clerk of the superior court of Cook county, published said legal notices in the *National Corporation Reporter* in its editions dated April 7th, April 14th, April 21st, June 9th, June 12th, and June 23rd, copies of said legal notices being attached to and made part of the declaration.

The demurrer filed by the Attorney General of the State of Illinois is, as a matter of law, sustained. This claim should have been paid by the Attorney General from appropriations allotted to him during the period above set forth, and we do not feel that there are any grounds, either of equity or social justice, which warrant the allowance of this claim, hence the demurrer is sustained.

(No. 806—Claimant awarded $4,066.44.)

VULCANITE ROOFING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be made.* While the tax erroneously paid may not be recovered, yet on grounds of social justice and equity, a refund may be awarded.

ADAMS, FOLLANSBEE, HAWLEY & SHOREY, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed by above claimant to recover portions of franchise taxes erroneously paid by above named claimant

to the Secretary of State of the State of Illinois in the years 1921 and 1922, total excess tax paid amounting to $4,066.44.

The demurrer filed by the Attorney General of the State of Illinois is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $4,066.44.

(Claim denied.)

FRANK WINTERS, 811; BONNIE WINTERS, 812; FRANK JOSEPH WINTERS, JR., 813, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

RESPONDEAT SUPERIOR—*when State not liable. Negligence of its employee.* The State is not liable for the negligence of its employees.

GEO. W. DOWELL, for claimants.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court.

These cases will be treated together inasmuch as they refer to the same accident, and the same testimony is applicable to each. Claimants ask for damages sustained by each respectively, arising out of an accident, which occurred under the following circumstances: On March 22, 1924, Frank Winters, together with his wife, Bonnie Winters, and infant child, Frank Joseph Winters, Jr., were driving along a state highway about two miles north of the City of Carbondale, Jackson county, Illinois, in the night time of said date, when he, said Frank Winters, collided with a certain truck owned by the State of Illinois, which had been left standing without an attendant upon, along and crosswise said hard road; that by reason of said collision, the car in which they were driving was injured beyond repair, and each of claimants suffered severe injuries.

Demurrers, filed by the Attorney General of the State of Illinois are, as a matter of law, sustained.

It appears from the testimony that one Sykes, in the employ of the State of Illinois as highway patrolman from Carbondale to DuQuoin, was driving a State truck north of Carbondale along and upon the pavement upon a State high-

way leading north from Carbondale, and when Sykes had arrived about one mile north of Carbondale he attempted to turn the truck around, and while endeavoring to make the turn backed the truck so that the rear wheels left the pavement and mired down in the mud so that the truck by its own force could not get back upon the pavement. The truck was about at right angles with the pavement so that the front of the truck pointed westward and there was a distance of between four and four and one-half feet between the west edge of the slab and the front part of the truck. After working with the truck and endeavoring to extricate it about an hour, the patrolman went into Carbondale to procure lanterns, and returned with same and placed same on the truck about 7 o'clock, one on the front bumper and one on the south side of the truck just in front of the rear wheel. We do not find any evidence of negligence on the part of any of the State employes in this instance, and had the driver of the Chevrolet above mentioned, the claimant, Frank Winters, been in the exercise of due care and caution, he could have avoided the accident. It is therefore the judgment of this court that these claims and the same are hereby rejected.

(No. 819—Claimant awarded $887.83.)

RAMAPO AJAX CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be made.* **This case is controlled by the decision of the court in *Vulcanite Roofing Co.* v. *State*, *supra*.**

WHITMAN & MILLER, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the refund of certain portions of franchise taxes erroneously paid by above claimant to the Secretary of State of the State of Illinois, in the year 1922, total excess paid by above claimant amounting to $887.83.

The demurrer filed by the Attorney General of the State of Illinois is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $887.83.

(No. 821—Claimant awarded $2,950.00.)

ED. S. SMITH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.
Opinion filed May 1, 1925.

FEES & SALARIES—*when State liable.* An employee of the State is entitled to receive the salary fixed by statute pertaining to his employment, and the State is liable therefor.

WATSON & WARFORD, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant was appointed in due course as metal mine inspector and entered upon the duties of his position the 16th day of February, 1922, and has continued as such inspector from the time of his appointment until the filing of his declaration.

The plaintiff alleges that his salary was fixed by the laws of the State of Illinois, Section 95, Chapter 93 of the Smith-Hurd, Illinois Statute, that the amount so fixed was $3,600.00 a year, that part of the time he was paid $250.00 per month and part of the time $125.00 per month.

It appears from the record further, that the difference between the amount paid him and the amount allowed by the statute up to July 1, 1924, amounts to the sum of $2,950.00.

It does not appear from the declaration that the claimant asked for any further relief.

The Attorney General comes and files his demurrer.

It is the opinion of this court after examining all the records that this claimant entered upon his duties under the statute fixing his salary at $3,600.00 per year for the term of his appointment and therefore in equity and social justice, as well as law, is entitled to recover for the services rendered.

It is therefore recommended by the court that claimant be allowed the sum of $2,950.00.

(No. 823—Claimant awarded $2,500.00.)

JAMES WADE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

GOVERNMENTAL FUNCTION—*when State not liable.* The State in the construction of its public highways exercises a governmental function and is not liable for injuries sustained by its employees in its construction.

SOCIAL JUSTICE AND EQUITY—*award may be made.* While the State is not liable for injuries sustained by its employees while in the discharge of their duty, an award may be made to such employee, and compensation fixed by the provisions of the Workmen's Compensation Act.

CAPPS & WEAVER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant, James Wade, who was in the employ of the State of Illinois on August 8, A. D. 1922, near Florence, in Pike county, Illinois, as a stationary engineer and laborer under the Division of Highways, Department of Public Works and Buildings of the State of Illinois, brings his suit for damages for injuries received by him while in the performance of his duty. The testimony in this case shows that on the date above mentioned, James Wade was employed by the proper officials of the State or of the highway department to fire a steam boiler which produced steam for the operation of the drills used in preparing to blast the rock from the bluff which was used for the construction of the road, or in order to get the rocks away from the proposed course of the new road. It was a part of his duty to attend to the line of iron pipe called the steam line, which ran from the boiler to the place where the drills were used, and while so doing his usual work, together with other workmen, was directed to repair the steam line, which was leaking. He, with the other workmen proceeded to carry out this order, and while working on the steam line, which was supported on cross pieces, his foot slipped on some loose rocks or gravel and he put forth his hand to steady himself, and his hand struck some object with sufficient force to produce a small wound. He immediately washed the wound and gave it little thought, but later it was apparent that the wound had become infected. He was ordered to proceed to Dr. Goodin for treatment. He took this

treatment, but the wound did not yield to the treatment, and he was ordered by his foreman to go to Dr. R. O. Smith, who was then a practising physician and surgeon at Pittsfield, the county seat town, about eleven miles from where he was working. His condition became so bad that he had to submit to an operation, and finally lost the first or index finger, and has also lost the use of the second and third fingers, so that at present there is very little movement of any of the fingers of the hand except a slight movement of the thumb and little finger.

The Attorney General of the State of Illinois filed a demurrer, which, as a matter of law, is sustained.

It appears that claimant is a man of very little property and of no education, and up to the time of the injury had made his living by manual labor; that he has two minor children, who live with him, and that his wife died shortly before the injury occurred. The claimant has been paid some money by the State of Illinois, to the extent of about $500.00, and his physician's bills have been paid in so far as he knows. While the State is not legally liable for the payment of an award, the court, as a matter of social justice and equity, awards said claimant the amount which he would be entitled to receive under the Workmen's Compensation Act for the injury sustained, or the sum of $2,500.00.

(No. 824—Claimant awarded $1,000.00.)

MICHAEL W. WRIGHT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

RESPONDEAT SUPERIOR—*State not liable for injuries sustained by its employees in discharging their duty.* The State is not liable for injuries sustained by its employees while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made to injured employee.* While there may be no legal liability against the State for injuries sustained by its employees in the discharge of their duty, yet in the interest of social justice and equity an award may be made for injuries sustained.

JOHN G. FRIEDMEYER, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant, Michael W. Wright, brings this suit for the reason of damages received by him while operating the elevator in the State Capitol building.

The facts in the case alleged in his declaration are substantially as follows:

On the 11th day of October, 1921, he was directed by the custodian of the capitol building, in charge of the Secretary of State, to operate a certain elevator of the State while the inspectors were present to inspect the same. The elevator was being tested by operating the same. The elevator was loaded with pig iron, increasing the weights along from time to time to test its strength. The claimant was then operating it for such testing. He had made fifteen trips without any accident, and ordered to make another under high speed, as was usual to do in making such tests; and while the elevator was running at great speed, in accordance with the instruction of his superior officer, on reaching the third floor the clutches caught in the mechanism of the elevator, and suddenly stopped with a terrific jar, by means of which claimant was thrown with great force upon the bars of pig iron which lay on the floor of the elevator car. He was rendered unconscious and hurt about the abdomen, left side, left hip, and hurt internally.

The claimant was under the care and treatment of Dr. Patton for four or five months. He continued in his regular employment till April, 1922, and continued earning his regular salary of $100.00 per month. He then obtained leave of absence for six months from May 1, 1922, during which time he received no pay from the State, and went back to work November 21, 1922, at same salary, was off again on leave of absence from May, 1923, to November, 1924, during which time he received no pay. He was injured about the head and spine and his nervous condition shattered and complications developed which have become chronic.

He claims to have paid out large sums of money to Drs. Tripp, Patton, Bennett, Imlay and other persons.

Mr. Millspaugh testifies that claimant was off duty and off payroll for eight months and twenty-five days. Dr. Trapp testified that claimant had some enlargement of the heart, hardening of the arteries, digestive organs inflammation of the gall bladder, adhesions of the bowels, adhesion of the appendix, chronic appendicitis, swelling in right groin, which could not alone have been due to old age; and that his disabilities are permanent. His bill is $82.00.

The evidence is not disputed, except that Mr. Scott, superintendent of buildings, testified he had told claimant that when the Otis people came to test the elevator for him to step

off and let the Otis people put on their own man. This Wright denies under oath. This is the only controverted point. Inasmuch as Scott is not corroborated upon that point and Wright denies it, it must be solved in Wright's favor, there being no other facts to corroborate the evidence of Scott and the witnesses being of equal credibility.

The State, through its attorney, cites authorities to the effect that the State is not liable from a legal standpoint. This is true, but in the interest of social justice, we have decided to make an award for claimant. The evidence as a whole presents a somewhat complicated case, and it is a little difficult to arrive at a just conclusion. There is no doubt in the minds of the court that the claimant is in a very bad physical condition, and from the evidence we must conclude it was due to the injuries, both external and internal, he received at the time of the accident that caused the condition. He testifies that he is practically totally disabled. The evidence shows that he is still in the employ of the State at his usual salary, that had existed prior to and up to the time he was injured. In the interest of social justice and equity, we have decided to award the claimant the sum of $1,000.00.

(No. 826—Claimant awarded $2,100.00.)

SALINE GAS COAL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*tax erroneously paid may be refunded.* This case is similar to that of *Vulcanite Roofing Co. v. State, supra,* and the decision of the court in that case governs this claim.

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD J. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the recovery of portions of franchise taxes erroneously paid by above named claimant to the Secretary of State of the State of Illinois in the years 1921 and 1922, total excess tax paid amounting to $2,100.00.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $2,100.00.

(No. 830—Claimant awarded $582.70 with interest.)

STATE BANK OF CHICAGO, EXECUTOR OF THE ESTATE OF SHERMAN T. COOPER, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

INHERITANCE TAX—*refund or renunciation of will by widow.* Where an inheritance tax has been assessed and paid, under Sec. 25, of Inheritance Tax Law, and afterwards the widow files her renunciation of the provisions of the will made for her, and by subsequent proceedings in the county court there was an overpayment of the tax by reason of such renunciation, claimant is entitled to a refund of the amount overpaid.

GARDNER & CARTON, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The State Bank of Chicago, as executor of the estate of Sherman C. Cooper, deceased, brings this suit to recover on refund an amount alleged to be due deceased under the provisions of Section 25 of the inheritance laws of Illinois.

After the appraisement, fixing the amount inheritance tax to be paid under order of the county judge and the payment of the same, and after the renunciation of the provisions of the will, making certain provisions for the widow, and by subsequent findings and order of the county court, there became due to claimant the sum of $582.70, to which it is entitled to refund.

It seems that this is what Assistant Attorney General Eagleton designates Claim No. 2, and the matter has been taken up by him for the State and gone into very carefully with claimant, and the parties have mutually agreed that the sum of $582.70 should be refunded to claimant. This the Attorney General, by his said assistant, Eagleton, reports in his answer, and by making oral explanation in open court. The evidence supports the claim, and by mutual agreement as aforesaid, the court hereby awards claimant the sum of $582.70, with 3% interest from October 14, 1923.

(No. 830a—Claimant awarded $10,992.86 with interest.)

STATE BANK OF CHICAGO, EXECUTOR OF THE ESTATE OF SHERMAN T. COOPER, Deceased, Claimant, *vs.* STATE OF ILINOIS, Respondent.

Opinion filed September 14, 1924.

INHERITANCE TAX—*refund or renunciation of will by widow.* Where an inheritance tax has been assessed and paid, under Sec. 25, of Inheritance Tax Law, and afterwards the widow files her renunciation of the provisions of the will made for her, and by subsequent proceedings in the county court there was an overpayment of the tax by reason of such renunciation, claimant is entitled to a refund of the amount overpaid.

GARDNER & CARTON, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for Respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant, State Bank of Chicago, as executor of Sherman T. Cooper, deceased, presents claim for the refund of inheritance in the sum of $10,992.86.

The claimant in its contention for such allowance, presents its case based upon the following facts, viz: That Sherman T. Cooper, a resident of Chicago, Cook county, Illinois, died in Chicago, April 4, 1923, leaving a last will and testament, which was duly admitted to probate in said county, and claimant was appointed executor and as such, qualified and is now acting.

October 4, 1923, an order entered by the county judge on the appraisement, fixed the cash value of the property, as shown by a lengthy itemized statement shown in the judge's order, a copy of which is filed herewith, and found the amount of the inheritance tax due thereon to be $74,176.73 which the executor paid to the county treasurer October 4, 1923.

On December 3d, claimant appealed from said order to the county court of said county, and on a hearing the county court entered an order revising the said prior order of the county judge, as shown by copy of the order filed in this case, upon which an order was made fixing the total inheritance tax to be paid to the State of $75,736.65, which less 5%, equaled $71,948.87, which was paid October 4, 1923, as aforesaid.

On February 23, 1924, Jennie V. Cooper, the widow of said deceased Sherman T. Cooper, filed in the Probate Court of Cook county her renunciation under his will, and by reason of such renunciation, the property which the parties interested

in the estate, were entitled to receive, and the amount of tax payable thereon, were materially changed.

That by reason thereof, the claimant on August 13, 1924, filed in the county court of Cook county, its petition for a reappraisement and for a revision of the inheritance tax, and said court on the same date entered an order making such reappraisement and revising such tax; and fixed the total of such tax at $64,164.22, and this sum less 5% the statutory discount, made a net amount so due of $60,956.01. The claimant has filed certified copies of all orders and other proceedings of the court and judge and such other evidence as are necessary to prove its claim. The Attorney General states that he has carefully gone through the pleadings, evidence and all files, and finds the statement of claimant to be true and consents to the allowance of the claim as proven and claimed.

By reason of the premises, there has been an overpayment of the inheritance taxes in said estate, as shown by the order of the said county court August 13, 1924, and the claimant is entitled to a refund of tax as follows:

Tax actually paid October 4, 1923, (being the sum $75,735.65 as fixed by order of court December 3, 1923, less 5% discount allowed by law), $71,948.87	$71,948.87
Net tax, actually due (being the sum of $64,164.22, as fixed by order of the county court August 13, 1923, less 5% discount, allowed by law)	60,956.01
Over-payment	$10,992.86

This court finds the claim correctly set forth and fully sustained by the evidence. According an award is made to claimant in the sum of $10,992.86, with interest at 3% from October 4, 1923.

(No. 832—Claimant awarded $3,500.00.)

ABRAM S. WILSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

GOVERNMENTAL FUNCTION—*State not liable for injuries sustained by its employees. State highways.* The State in constructing its highways exercises a governmental function and is not liable for injuries sustained by its employees, while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* On grounds of social justice and equity an award may be made to an employee injured in the discharge of his duty, although no legal liability exists against the State.

J. H. SEARING and CHAS. E. HAMILTON, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This case comes before the court on a declaration filed by Abram S. Wilson to recover damages sustained by him while in the employ of the State of Illinois, in the capacity of inspector in the construction of a Portland Cement Concrete pavement, being built by the State of Illinois, known as Section 11, S. D. Route 2, and his declaration alleges that in that capacity he traveled to and from his work by means of a motorcycle, which was owned by the State of Illinois; that on September 28, 1922, he was returning from his work on said road to his residence in Carbondale, and that he was coming toward Carbondale over the completed portion of the pavement on Section 11, S. B. Route 2, which had been opened to traffic; that while traveling over said highway on the evening aforesaid at an hour between six and seven o'clock P. M., and while traveling in the regular traveled track on said paved highway at the rate of about twenty miles per hour, in turning aside to pass an approaching car, the motorcycle which complainant was riding struck a pile of sand on the pavement, which caused the motorcycle to skid across the pavement, striking a bag of calcium chloride, both of which materials were for use in constructing said pavement; thence striking the concrete curb along the edge of the pavement; that he was thrown from the motorcycle in such a manner that he struck a fruit tree with his head, the impact being so severe that his skull was crushed over the right temple and that he was rendered unconscious; that as a result of the accident he was confined in the hospital three weeks; and that he was so

incapacitated by said accident that he was unable to resume his duties as engineer with the State of Illinois, Department of Public Works and Buildings, Division of Highways, between the dates of September 28, 1922, and April 30, 1923; that he did return to his duties as engineer with said Division of Highways at the district office at Carbondale, Illinois, but that the hearing in his right ear was destroyed and the right side of his face was partially paralyzed as a result of said accident.

The demurrer filed by the Attorney General of the State of Illinois is, as a matter of law, sustained.

There is no liability on the part of the State in this case, but on the grounds of social justice and equity, we award the claimant the amount he would be entitled to receive under the Workmen's Compensation Law in force in the State of Illinois, or the sum of $3,500.00.

(No. 833—Claimant awarded $975.00.)

HERBERT DEATON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

MILITARY SERVICE—*when claimant entitled to award.* When claimant a member of the Illinois National Guard is injured while in the performance of his duty, he is entitled to an award, under Sec. 142, of Chap. 129, Smith-Hurd's Rev. St. 1927.

HERBERT DEATON, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This case comes before the court on declaration filed by Herbert Deaton, setting forth that on February 15, 1924, about 9:30 P. M., Headquarters Detachment, 2nd Squadron, 106th Cavalry, arrived in Springfield, Illinois, from Williamson county, Illinois, after a period of riot duty; that claimant was assisting in unloading equipment from a truck at the State Arsenal at that time, and while so engaged the truck driver suddenly backed up the truck; that he was unable to escape owing to a large crowd leaving the arsenal at the conclusion of an evangelistic service, and his right leg was caught between the truck and the stone step of the arsenal entrance, resulting in a compound fracture of the right leg;

that he was removed to St. John's Hospital in Springfield, where he remained for eight weeks before being discharged; that on July 4, 1924, while convalescent, he was riding a horse, the property of Major Herbert W. Styles, commanding the 2nd Squadron, 160th Cavalry; upon dismounting from this horse at his home, claimant stepped in a rut and again fractured his right leg and was taken to the Springfield Hospital, Springfield, Illinois, where he was confined for six weeks; that these injuries were not due to any carelessness on claimant's part.

The Attorney General filed his statement in the above entitled cause as follows: The claimant was injured February 15, 1924, and received a second injury July 4, 1924, at both times being on duty as a member of the Illinois National Guard; claimant's injuries were attended to and he has been examined on several occasions by surgeons acting under orders of the military authorities of the State. The claimant herein is in poor financial circumstances, and for that reason the case is being submitted to this court rather informally, in order to expedite its disposition and to minimize the expenses to the claimant in presenting his claim. It appears from the facts submitted to the Attorney General by the Adjutant General that since the first injury to the claimant, the Adjutant General has given the case close observation, and as a result thereof we are in a position to fully and satisfactorily lay the facts before the court in this way. We submit statements in regard to the case signed by the following parties: Major Herbert W. Styles, Private Richard W. Newell, Dr. E. S. Spindel, Sergeant George W. Boggs and Dr. H. H. Tuttle, relating to the accident and nature and extent of claimant's injuries. We also submit herewith photostatic copy of physical examination of the claimant made by Colonel George C. Amerson, surgeon general of the Illinois National Guard, on March 1, 1924, and also photostatic copy of the surgeon general's final examination of the claimant on December 4, 1924. These examinations by the surgeon general were made under orders issued by the Adjutant General. We believe the facts thus presented are sufficient to enable the court to determine the nature and extent of the claimant's injuries. Special attention of the court is called to the report of the surgeon general, Amerson, on his examination made December 4, 1924, wherein he states: It is my opinion that the above has a permanent disability of 15 per cent.

We wish to further suggest that in view of the claimant's second injury, occurring before he had fully recovered from his first injury, that some consideration should be given to the possibility and probability of the original injury being to a certain extent responsible for the second injury. The Attorney General desires to call to the attention of the court information furnished him by the Adjutant General to the effect that since claimant sustained his first injury on February 15, 1924, there has been paid to him by order of the Adjutant General a sum of $106 on salary. The Adjutant General also caused to be paid to Dr. H. H. Tuttle for medical and surgical attendance $214, and to St. John's Hospital, of Springfield, for hospital services rendered claimant the sum of $150.75. The Adjutant General has recommended to the Attorney General "that this case be expedited in every way possible for an early adjustment on an equitable basis."

The court finds that this case arises under the military code of the State, and that the claimant is entitled to an award. The court therefore awards the claimant the sum of $975.00.

(No. 837—Claimant awarded $7,065.48.)

CADET KNITTING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be made.* This case is similar to that of *Vulcanite Roofing Co.* v. *State, supra,* and the decision of the court in that case governs this claim.

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for refund of certain portions of franchise taxes erroneously paid to the Secretary of State of the State of Illinois by above named claimant, in the years 1920 and 1921, total excess tax paid amounting to $7065.48.

The demurrer filed by the Attorney General of the State of Illinois is, as a matter of law, sustained.

On the grounds of social justice and equity, we award above named claimant the sum of $7065.48.

(No. 838—Claimant awarded $3,780.75.)

CADET KNITTING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund will be made.* This case is governed by the decision of the court in the case of *Vulcanite Roofing Co.* v. *State, supra.*

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the refund of franchise taxes erroneously paid by the claimant to the Secretary of State of the State of Illinois, the excess due claimant being $3780.75.

The demurrer filed by the Attorney General of the State of Illinois is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $3780.75.

(No. 839—Claimant awarded $5,914.76.)

PIGGLY WIGGLY STORES INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund will be made.* This case is governed by the decision of the court in *Vulcanite Roofing Co.* v. *State, supra.*

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the refund of franchise taxes erroneously paid to the Secretary of State of the State of Illinois, in the years 1920, 1921 and 1922, by the above named claimant, total excess paid amounting to $5914.76.

The demurrer filed by the Attorney General of the State of Illinois is, as a matter of law, sustained.

We award claimant the sum of $5914.76, on the grounds of equity and social justice.

(No. 842—Claim denied.)

ALONZO ECHOLS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

GOVERNMENTAL FUNCTION—*State highways. State not liable for negligence of its employees.* The State in owning, operating and constructing its highways exercises a governmental function, and is not liable for the negligence of its employees, agents or officers.

SUB-CONTRACTOR—*State not liable for acts of.* A sub-contractor in constructing a State highway cannot thrust liability upon the State, or render it liable for his acts or negligence while performing his contract with the State.

C. S. MILLER, for claimant.

OSCAR E. CARLSTROM, Attorney General; George C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This case comes before the court on a declaration filed by claimant, Alonzo Echols, in which he sets forth that on August 31, A. D. 1921, claimant was the owner of certain lands, located in Pulaski county, Illinois, lying adjacent and south of the Village of Ullin in said county, and which lands were of great value to claimant, and there was adjacent to, running through and dividing said lands a certain public highway which was commonly called the Ullin and Caledonia road, then and there leading from the Village of Ullin in a southeastwardly direction to the cities and towns in the county of Pulaski, which said road was then and there open and generally traveled by the public; that on said date, the State of Illinois was in the process of constructing a public highway in a northerly and southerly direction through and south from the Village of Ullin through the county of Pulaski, which road was known as State Bond Issue Road Number Two, and which road was being constructed along the easterly side of claimant's said property at the point aforesaid, where claimant's said property was crossed by the said Ullin and Caledonia road; that the State of Illinois was employing in and about the construction of said road the Robinson Bros. Construction Company and other agents and servants of the State of Illinois, and it became and was the duty of the State to so construct said road as not to injure, damage, obstruct or cut the said Caledonia and Ullin road or to interfere with the

travel thereon by claimant or the general public; that said State Bond Issue Number Two Road, was improperly constructed at said point so as to totally cut and destroy the said public highway so that claimant and others leaving his land are totally unable to travel across and along said public highway to the east or south, and are wholly unable to reach said lands from said directions; that said State of Illinois, through its employees, agents and servants went upon his said lands without any right or authority of law and trespassed thereon, piling vast quantities of earth and other waste material thereupon, and dug large holes and excavations on his said land, and in other ways injured said land and destroyed the value thereof; and claimant says that he is injured and has sustained damages to the amount of One Thousand Dollars.

The demurrer filed by the Attorney General of the State of Illinois, is sustained as a matter of law.

The testimony and evidence submitted in this case is quite voluminous. It is unnecessary to cite authorities on the familiar principle that the State, in owning, operating, controlling its highways, exercises a governmental function and is not legally liable for the acts of its officers, agents and employes. That being so well settled, it requires no argument on the proposition that one not even remotely under the jurisdiction of the State, as in this case a sub-contractor, should not be permitted to thrust any liability upon the State by its unlawful acts. To hold otherwise and permit such a class by their acts to bind the State to liability for damages, when it is well settled that even the officers, agents and employes of the State cannot do so, would establish a most dangerous precedent. Upon examination of the testimony submitted, we find that there was practically no damage done to the land of claimant that is injurious to same, and there is no element of equity or social justice which leads us to make an award in this case; hence, the demurrer filed by the Attorney General is sustained.

(No. 845—Claim denied.)

MALCOLM B. STERRETT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

CONTRACT—*State not liable for services of a voluntary worker.* The State is not liable for the services performed by claimant who was a voluntary worker, although the services were performed for a department of the State.

MALCOLM B. STERRETT, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant, Malcolm B. Sterrett, claims that he was an assistant to Attorney General Brundage in 1921 and rendered services for the State in capacity of Assistant Attorney General in 1921 and up to October, 1922, for which he claims $3625.00. That the Attorney General accepted such services and paid him $250.00 on his said demand. He files no bill of particulars, as required under the rules of this court. He does not state whether or not it has ever been presented to any other department, etc., for payment.

The Attorney General causes and files his plea and answer, denying that the State is indebted to claimant; and states that prior to July, 1921, the Attorney General did have some conversation with claimant relative to employing him as Assistant Attorney General. That about 1st of July, 1921, the Attorney General told claimant he would not be able to employ him as one of his assistants, as he had no funds with which to pay him, and thereupon then and there claimant expressed a willingness to come into the office as "a volunteer worker," making use of the facilities of the office in his own behalf, and so remained till about October, 1922. Attorney General Brundage, as stated by Attorney General Carlstrom, in his pleas and answers, denies that he employed claimant, or called on him to render any special services or any services for which he was not compensated. But that Attorney General Brundage did pay claimant $250.00 for "special services" and owes him no more.

The statements of Attorney General Brundage and his deputy make it very clear to the court that there was no contract by and between the Attorney General and the claimant that would warrant a recovery against the State.

The case is accordingly dismissed.

(No. 848—Claimant awarded $1,333.28.)

WALTER F. ROHM, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FEES & SALARIES—*when claimant entitled to award.* A State employee is entitled to the salary or compensation fixed by statute.

AUGERSTEIN & SCHNEIDER, for claimant.

EDWARD J. BRUNDAGE, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that the claimant was duly appointed secretary of the Industrial Commission of the State of Illinois on the 1st day of May, 1923, and that he has been fulfilling the duties of that position up to the 1st day of July, 1923, at the salary of $5000.00 per annum, that since the 1st day of July, 1923, he has been paid for his services at the rate of $4000.00 per annum and that there is now due the claimant up to and including October 31, 1924, the sum of $1333.28.

It is the opinion of this court from the records that the claimant performed his duty and should receive compensation as fixed by statute.

Therefore, it is considered by the court that the claimant be allowed the sum of $1,333.28, balance due him on his salary.

(No. 851—Claimant awarded $1,800.00.)

JAMES G. BROADHURST, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

GOVERNMENTAL FUNCTION—*when State not liable.* The State in conducting the Illinois State Prisons exercises a governmental function, and is not liable for injuries sustained by its employees therein while in the performance of their duty.

EQUITY AND GOOD CONSCIENCE—*award may be made.* The court may award compensation to an injured employee of the State, as a matter of equity and good conscience.

JOHN L. WALKER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This claimant was employed as a guard at the Illinois New State's Prison on the 10th of November, 1924. About ten

o'clock of that day he was in the yard of said institution performing his usual ordered and customary duties having charge of inmates who were doing construction work; that an inmate by the name of Robert Johnson beat and assaulted the plaintiff on the head causing dangerous and painful injury. It appears to the court that the plaintiff was injured through this assault receiving a laceration over the top of the head about four inches long and another laceration on the side of the head three inches long and that his back was wrenched and bruised; that by the result of such injuries the claimant was disabled for a considerable period and that he will have a scar on the top of his head and that his face will be marred and scarred for life and that he has a ringing in his head, is dizzy and unable to properly perform his usual and customary duties.

As it has been held by this court on many prior cases, there is no legal liability against the State of Illinois but as a matter of equity and good conscience it is considered that employes of the State engaged in these hazardous occupations should receive at least the same consideration in case of injury as if they were employed by a private corporation or individual.

Therefore it is considered by the court that the claimant be allowed the sum of $1,800.00.

(No. 858—Claimant awarded $300.00.)

THE NATIONAL BANK OF CARMI, ILLINOIS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

There being no dispute as to the law and facts in this case the court enters an award to claimant.

ROY E. PEARCE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

Declaration and pleas filed, and evidence read and heard in open court. Oral argument of counsel representing all parties also made in open court and the court awards claimant, The National Bank of Carmi, Illinois, the sum of $300.00.

(No. 859—Claimant awarded $2,500.00.)

LAWRENCE CLARK, A MINOR BY MURIEL KLASEN AS NEXT FRIEND, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1923.

STUDENT AT STATE INSTITUTION—*when award may be made for injuries sustained by.* A student at the State School for the Deaf at Jacksonville, was required to work at a planer the blades of which were not properly protected, and by reason of the unsafe condition of the machine, sustains an injury by having his fingers cut off: *Held*, He is entitled to an award for the injuries sustained.

CARL CHOISSER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought by a young man who was a student in a school for the deaf operated in the city of Jacksonville, county of Morgan in the State of Illinois. It appears that this school was equipped and under the jurisdiction and control of the State of Illinois and directly under the control and supervision of the Department of Public Welfare of the State of Illinois; that prior to Feb. 7, 1922, it appears that this claimant was required to work on a certain piece of machinery used in the Manual Training Department of the said school, known as a planer, and the claimant further alleges that it was the duty of the defendant to use reasonable care to keep the planer in reasonable and safe condition, it being further alleged that the planer was permitted to become in an unsafe and dangerous condition; that because of the fact that said planer did not have safety blades in it and was not protected, the claimant, on Feb. 7, 1922, while attempting to make a bevelled edge on a panel by using the planer for the benefit of the school as aforesaid and while using due care and caution for his own safety, his index and middle fingers were caught in the said planer and were amputated. Therefore the claimant brings his claim for $5,000.00.

The Attorney General comes and admits the facts as stated in claimant's bill of complaint, are substantially correct, the Attorney General stating that the claim was forwarded to the Department of Public Welfare where the au-

thorities upon investigation found the claim to be equitable and just to the extent and for the amount submitted to this court.

This is a deplorable accident and more pathetic because of the infirmities of the claimant and consequently commands a careful and equitable consideration. It is however the opinion of the court that the amount asked is larger than can consistently be allowed in view of the precedents in other similar cases. It is the opinion of the court however that the claimant should be allowed the sum of $2,500.00. It is therefore recommended that said amount of $2,500.00 be allowed.

(No. 860—Claim denied.)

ELLA M. COCHRAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

SERVICES—*when award will not be made for.* The court will look with disfavor upon claims filed when several sessions of the legislature intervene between the time the services are alleged to have been rendered and the filing of the claim therefor.

RULES OF COURT—*must be complied with.* Claimant must comply with the rules of court in the filing of his claim against the State.

ELLA M. COCHRAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FLOYD E. BRITTON AND J. W. GULLETT, Assistant Attorneys General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

Ella M. Cochran being the plaintiff in this suit files this claim in the sum of $150.00, which she claims to be due her for services rendered by her in the early part of the year 1921 and at the request of the Attorney General of the State of Illinois for work done in writing in cases wherein the Attorney General filed petitions for the dissolution of certain corporations of the State of Illinois.

It seems from the evidence in this case that the claimant was Deputy County Clerk of Sangamon county and as such undoubtedly was being paid a regular salary or compensation regularly for her services.

As such Deputy County Clerk she claims that this work was for extra night services done by her in connection with

the aforesaid cases and at the request of the Attorney General.

She has made out and filed in this court a claim sworn to by her against the Attorney General of the State of Illinois for such services. It does not appear anywhere that she has ever filed a declaration or made out a claim and sworn to the same against the State of Illinois. She states however, that she made application to the Attorney General in 1921 to pay this claim, which he claims he could not do as he had exhausted his appropriations that year, made for such purposes.

These services were rendered in May, 1921, and this claim is not filed until January 12, 1925, until after the expiration of the term of the Attorney General who secured her services; as aforesaid the Attorney General Edward J. Brundage in response to a letter written by her, admits that the claim is just and that he agreed to pay the same, but did not do it for the reason of lack of funds.

He further states that these services were done in compliance with appropriations made for the purpose for which it was claimed to be made in 1919.

It appears from this then, that there were three sessions of the Legislature to-wit: 1919, 1921 and 1923 when appropriations might have been made to pay for all of such services.

It is evident that she was being paid her regular salary for services as Deputy County Clerk during the time that she was doing this work.

She has let this claim drag throughout the entire term of Attorney General Brundage and after the expiration of his term of office has filed this claim for allowance.

We do not look upon such claims with favor. There is no declaration filed nor are the rules complied with in bringing such claims in any particular.

For the reasons above stated, the above claim will be disallowed and the case dismissed.

(No. 865—Claimant awarded $3,000.00.)

ARCHIE L. JOHNSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

STUDENT AT STATE INSTITUTION—*when award may be made for injuries sustained by.* A student at Northern Illinois State Teachers College, under the direction of the college authorities sustains injuries in the operation of dangerous machinery in the manual art department, and by reason of such injuries he is permanently disfigured: *Held.* He is entitled to an award as an act of social justice and equity.

JOHN M. BUCKLEY, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON AND FRANK R. EAGLETON, Assistant Attorneys General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover for injury sustained by claimant while a student regularly enrolled and paying tuition in the Northern Illinois State Teachers' College in the City of DeKalb, and State of Illinois.

It appears while the claimant was working in the manual art department of said college, operating a saw which was part of the equipment of said arts department, his left hand was thrown in contact with the saw, by reason of which he suffered the amputation of the thumb, the index finger and the middle finger of his left hand and other lacerations and injuries to said hand.

It appears to the court that this is a case that appeals more strongly than the principle of equity and social justice. The claimant appeared in person in court, a clean cut, intelligent young man, and offered for consideration of the court his maimed hand, which will not alone retard his possible success in life, but will also disfigure him.

He suffered a great deal of pain and other physical inconvenience, and it appears to the court that allowance should be made.

It is therefore considered by the court that the claimant was injured while giving due care for his own safety, was under the direction of the college authorities, was paying for his education, in fact the State was engaged in business and received the money of the claimant for the training he sought.

As it is often held by this court, there is no legal liability, however in accordance with the rule of equity and social justice, it is recommended by this court that claimant be allowed $3,000.00.

(No. 867—Claimant awarded $500.00.)

F. H. NOBLE & Co., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when refund may be made.* There being no dispute as to the law and facts in this case, the court enters an award in favor of claimant.

ROBERT F. KOLB, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is an action for a refund of franchise tax which it is alleged was paid by claimant in error to the Secretary of State for the years 1923 and 1924. It appears to the court from the record that there should be a refund as claimed and the Attorney General coming in files his stipulation admitting that claimant is in equity and good conscience entitled to a refund in the sum of $500.00.

Therefore it is recommended by this court that claimant be allowed the sum of $500.00.

(No. 875—Claimant awarded $1,500.00.)

THOMAS STACK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

RESPONDEAT SUPERIOR—*State not liable.* The State is not liable for injuries sustained by its employees while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* An award may be made to an employee of the State who is injured while in the discharge of his duty, as a matter of social justice and equity.

BARR & BARR, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This claim comes before the court on a declaration filed by Thomas Stack, claimant, in which he alleges that on or

about February 1, 1923, and for one year prior thereto he was employed by the Department of Public Works and Buildings under the supervision and direction of the Division of Highways; that on said date, while engaged in the discharge of his duties in trimming the trees which over-hung the public highway at and in the vicinity of Sag, Illinois, and while on a ladder ten feet from the ground and while sawing a branch from a tree, said branch broke before same was half way severed and fell and while so falling, said branch struck the ladder upon which claimant was standing, knocking the same from under him and as a consequence of which he was thrown upon the ground and as a result of which, claimant's leg was fractured; that he has spent a large sum of money in treating said injuries, and that his leg is permanently disabled.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of equity and social justice, we award claimant the sum of $1,500.00.

(No. 877—Claimant awarded $3,355.00.)

POWERS-THOMPSON CONSTRUCTION COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

CONTRACT—*when State liable.* Where a contract has been entered into between the State and claimant for the construction of a portion of its hard road system, and claimant enters upon the performance of its contract according to the terms thereof, and afterwards the State, through its authorized department, changes the location of the highway as specified in the contract, and by reason thereof claimant is compelled to rearrange its plans and its plant and equipment forced to remain idle for a considerable period of time causing loss to claimant: *Held.* Claimant entitled to an award for the damage sustained by the change of the contract by the State.

BARR & BARR, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This is a suit brought by Powers-Thompson Construction Company, a corporation organized under the laws of the State of Illinois, against the defendant, State of Illinois, to recover damages caused by a change made by defendant in a con-

tract with claimant to construct certain hard roads, and causing claimant's forces and machinery to be idle a long time.

The facts in the case are as follows: That on September 7, 1921, the said claimant entered into a contract with defendant, State, wherein the claimant, amongst other things, was to construct a concrete highway eighteen feet wide and do the necessary grading therefor along a portion of highway known as Section three (3) of State Bond Issue, Route No. 4, in the county of Will, State of Illinois, and to begin at Station No. 1343, a point near S. W. corner of S. W. ¼, Sec. 36, Town 33 N., R. 10, E. 3rd P. M., and extending in a northeasterly direction for a distance of 36,000 feet to what is known as Station 1703, for a consideration of One Hundred Fifty-five Thousand One Hundred Eight and 96/100 Dollars ($155,108.96), all in manner as set forth in the agreement of said date.

Said contract required, among other things, the claimant to commence the work not later than 15 days after date of notice to begin work and to complete same before December 1, 1922.

On August 1, 1921, claimant was duly notified by State to begin work within 15 days thereafter, which it did. The claimant constructed a large plant and a large amount of equipment at the Village of Elwood, that after claimant had completed the rough grading around two right-angle turns, as designated in contract, and laid its industrial tracks along the same, the State, acting through the Department of Public Works and Buildings, decided to change the location of said highway so as to *eliminate* said *right angles* by extending the road through what would have been the hypotenuse of a right triangle formed by the roadway.

Such change necessitated the taking of private property by the State, which it was unable to acquire till October, 1922; and that as a result claimant was compelled to re-arrange its plans so as to lay the southern portion first, instead of last as contemplated, and it was not able to begin laying concrete till June, 1922, causing a loss of time from April 1st to June 24th, during which time the plant and equipment were forced thereby to lie idle during said period; and for various other periods it lay idle, for which claimant claimed damages, and the State was then and there so notified.

Thereupon the Department of Public Works and Buildings, through its superintendent and other proper officers, reached an agreement in settlement of the damages caused as aforesaid, in the sum of $3,355.00. No objection is interposed by the Attorney General as to the settlement and the reasonableness of the same; but the Division of Highways could not pay same and recommended that same be filed with this court.

There is no dispute as to the facts and evidence in the case. The evidence establishes the claimant's right of action, and the court is of the opinion that the claim is reasonable and should be paid. The court accordingly awards claimant the sum of $3,355.00.

(No. 879—Claimant awarded $434.11.)

PHILOMENA L. GREULICH, EXECUTRIX OF THE ESTATE OF F. A. H. GREULICH, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

INHERITANCE TAX—*property not taxable. Claimant entitled to refund.* When an inheritance tax has been assessed against an estate, and the tax paid and the property of the estate is not subject to taxation, claimant is entitled to a refund of the tax paid.

FERGUS L. ANDERSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant files his claim for refund of inheritance taxes erroneously paid.

It was paid on property not taxable under the laws of Illinois. The Attorney General has examined the files and the evidence and consents to an award of the amount claimed. On examination of the evidence the court hereby makes an award to claimant, Philomena L. Greulich, executor the estate of F. A. H. Greulich, deceased, in the sum of $434.11.

(No. 880—Claimant awarded $322.00.)

DR. M. L. HARTMAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

SERVICES—*when State liable.* When medical services have been rendered to a person for whose injury an award has been made by the State, claimant is entitled to an award for the medical services rendered.

F. A. OAKLEY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

This is a claim for services performed by claimant in caring for A. W. Bruhn, Margaret Bruhn, Caroline Bruhn, Ralph Bruhn and Gladys Bruhn, said persons having been injured by an army truck while in actual service and being used by the Illinois State Militia, near Belvidere, Illinois, and an award having been made to them, in which award, no allowance was made for the services of said physician.

Statement filed by Attorney General of the State of Illinois recites that this claim was forwarded to the adjutant general's office, where it was duly investigated, and that same was found to be just and equitable for amount claimed.

Wherefore, we award claimant the sum of $322.00, being the amount claimed for professional services rendered to said persons.

(No. 883—Claimant awarded $744.18.)

ALBERT RICE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

INHERITANCE TAX—*when claimant entitled to refund. Sec. 25.* Where an inheritance tax has been fixed and paid under Sec. 25, Inheritance Tax Law, and afterwards under the provisions of the will claimant becomes entitled to the whole of the estate under the terms of the will, and the county court, upon proper proceedings, enters an order finding claimant entitled to a refund of the tax paid: *Held.* Claimant entitled to an award for the amount of the tax paid.

PEFFERS & WING, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

MR. JUSTICE PHILLIPS delivered the opinion of the court:

Albert Rice, claimant, presents this claim for refund of inheritance taxes under and by virtue of Sec. 25 of Inher-

itance Tax laws of Illinois. Mary M. Higgins of this State died testate January 1, 1923, and her will was duly admitted to probate, the estate administered, settled and executors discharged. The inheritance taxes were fixed and paid under protest.

Claimant and Clara Horton were made joint beneficiaries of the residue of the property of decedent, after payment of certain other legacies, and, at death of either, the other to get entire amount as provided by will. Clara Horton died and claimant became entitled to her part so that he is sole claimant.

Clara Horton was a stranger by blood to deceased—not related to her. The tax was assessed at the highest possible rate under said Sec. 25 in accordance with the provisions in the will.

At the death of said Clara Horton the claimant became entitled to a refund of the inheritance tax under Sec. 25.

The county court subsequently to the entry of original order fixing the tax, made another order finding complainant entitled to a refund of the amount so paid. Certified copies of orders of the court and of administration are in evidence and the claim proven by competent evidence and no defense.

It is found by the court that claimant, Albert Rice, is entitled to such refund and the court accordingly awards him the sum of $744.18.

(No. 884—Claimant awarded $2,679.01.)

SAMUEL P. PARMLY, JR. AND CLARA S. PARMLY, EXECUTORS OF SAMUEL P. PARMLY, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

INHERITANCE TAX—*when claimant entitled to refund under Sec. 25.* There being no dispute as to the law and facts in this case, the court enters an award in favor of claimant for the amount of their claim.

FRANK WENTWORTH SWETT, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimants, Samuel P. Parmly, Jr., and Clara S. Parmly, executors of the estate of Samuel P. Parmly, deceased, claim a refund in the sum of $2,679.01 of inheritance

taxes, paid under the provisions of Section 25, Inheritance Tax laws of Illinois.

On proper proceedings in the county, it is found that said sum was found to be due to claimants on refund. Copies of order of the court are on file.

The Attorney General in writing consents to an award in the sum claimed. The court on examination of all the evidence and on consent of the Attorney General finds the claimants are entitled to a refund of the said sum and the court accordingly awards the claimants the sum of $2,679.01.

(No. 886—Claimant awarded $1,139.74 with interest.)

SAMUEL J. MIXTER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

INHERITANCE TAX—*when claimant entitled to refund.* Where it is shown upon a proper proceeding for the re-assessment of the tax that the claimant is entitled to a refund, the court will enter an award in favor of claimant.

THOMAS S. WARD, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This case is an application by claimant, Samuel J. Mixter, for refund of inheritance taxes $1,141.45, the amount he claims to be due him on re-assessment and by a finding of the county court on such re-assessment, with interest from April 24, 1912, at the rate of 3% per annum.

It is evident to the court that there is now due claimant the sum of $1139.74 with 3% per annum from April 24, 1912, and to the allowance of this sum with interest the Attorney General files his written consent. The court accordingly awards the claimant the sum of $1,139.74 with interest at 3% from April 24, 1912.

(No. 887—Claimant awarded $433.02 with interest.)

JOHN CONNAGHAN, *et al.*, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

INHERITANCE TAX—*when claimant entitled to refund. Sec. 25.* There being no dispute as to the law and facts in the case the court enters an award in favor of claimant.

MARTINDALE & MARTINDALE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

John Connaghan et al, claimants, file this claim for refund of inheritance taxes to be due them under the provisions of Section 25, Illinois Inheritance Tax laws.

It appears that claimant paid the sum of $443.39 with interest $32.87 equal $476.26.

Later, on proper petition, the court re-assessed said tax in sum of $32.00 and the interest thereon, to-wit: $2.40, equal $34.40 due as inheritance tax, showing the sum of $441.86 less 2% retained by the county treasurer of Adams county, being the sum of $8.84, leaving a balance due for refund to claimants the sum of $433.02, together with interest thereon at 3% per annum from February 1, 1924, to this date, which is ordered paid to claimants, John Connaghan, Daniel Connaghan, James Connaghan, Mary Connaghan, Rose Gmeiner, Mary Warrell, Margaret Robinson and Bridget Flannagan or their legal representatives.

(No. 889—Claimant awarded $1,681.65 with interest.)

THE FOREMAN TRUST & SAVINGS BANK, TRUSTEE OF THE LAST WILL AND TESTAMENT OF GEORGE ANDRIN, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

INHERITANCE TAX—*when claimant entitled to refund under Sec. 25.* When an inheritance tax has been assessed and paid, under Sec. 25, Inheritance Tax Law, and the estate is afterwards re-assessed upon proper proceedings, and the court finds claimant entitled to a refund, a refund will be awarded.

VICTOR C. WINNEN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The Foreman Trust and Savings Bank, formerly named Foreman Bros. Banking Co., trustee, brings his suit to recover a refund of inheritance tax under the provisions of Section 25 of the Illinois Inheritance Tax laws.

The claimant was duly appointed executor of the last will and codicil of George Andrin, deceased, as shown by probate court records of Cook county, Illinois. The tax was legally entered and paid under the conditions of the estate as it then existed. On proper proceedings thereafter, the inheritance on re-assessment by the court, showed by the record evidence to be $1681.65 due on refund to claimant, with interest from 21st day of July, 1920, per annum from date.

The Attorney General files his answer admitting the correctness of claim and consents to the allowance in writing to said demand and the amount so found due.

It is accordingly found by the court that the claimant is entitled to the sum claimed, with interest as aforesaid. The court accordingly awards the claimant the sum of $1,681.65 with interest from July 1, 1920.

(No. 891—Claimant awarded $3,266.85.)

JOHN M. SMYTH, ET AL., EXECUTORS OF THE LAST WILL AND TESTAMENT OF THOMAS M. SMYTH, Deceased, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

INHERITANCE TAX—*renunciation by widow. When refund made under Sec. 25.* Where an inheritance tax has been assessed and paid under Sec. 25, Inheritance Tax Law, and the widow afterwards renounces the provisions of the will made for her, and it appears upon appeal that by reason of such renunciation the amount of the tax was in excess of the amount due the State: *Held*, Claimant entitled to an award for the amount of the excess found to be due claimant by the county court.

McCULLOCH & McCULLOCH, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

Claimants, John M. Smyth, Mary A. Smyth Nelson and Frank G. Nelson and Jane F. Smyth Patera, individually and as executors of the last will and testament of Thomas M. Smyth, deceased, claim a refund of inheritance tax under and by virtue of Section 25 of the Inheritance Tax laws of Illinois.

Decedent died testate June 16, 1917, and John M. Smyth, Mary A. Smyth Nelson and Frank G. Nelson were appointed executors under deceased's last will and testament. The inheritance tax is $6,526.72. By reason of the renunciation by the widow, of the provisions of the will, the said sum is too large, but it was paid by executors under protest. The case was appealed to the county court of Cook county, and upon hearing in said court on the 12th day of January, 1925, an order was entered by the court in the sum of $2715.39, and that sum was erroneously paid under Section 25 aforesaid.

A certified copy of the county court's findings and order are on file in evidence in this case. The Attorney General files his written consent to allowance of same as prayed. The claim is duly proven by the record evidence. It is therefore ordered and adjudged that claimants individually, and the executors aforesaid have an award of $2,715.39 with interest at the rate of 3% per annum from the 9th day of August, A. D. 1918.

(No. 892—Claimant awarded $495.00.)

WATSON H. ALLEN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

NON-LIABILITY OF STATE—*when State not liable. Ill. & Mich. Canal.* The State is not liable for damages to land and crops caused by an overflow of water from the Illinois and Michigan Canal.

SOCIAL JUSTICE AND EQUITY—*award may be made.* Although the State is not legally liable for damages to lands and crops of claimant caused by overflow of water from the Ill. & Mich. Canal, an award may be made to claimant on ground of social justice and equity.

LEE O'NEIL BROWNE, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for damage sustained by claimant to his land and crops by reason of the overflow from waters of the Illinois and Michigan canal on August 8, 1924, damages to crops amounting to $495.00.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

On the grounds of social justice and equity, we award claimant the sum of $495.00.

(No. 893—Claimant awarded $1,442.50.)

ROBERT J. CALHAN AND ROBERT CALHAN, PETITIONERS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

NON-LIABILITY OF STATE—*State not liable for overflow of water, causing damage, from Illinois & Mich. Canal.* This case is similar to that of *Allen* v. *State, supra*, and the decision of the court there announced governs this claim.

LEE O'NEIL BROWNE, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This claim comes before the court on a declaration filed by above named claimants, for damages by them sustained by

reason of the overflow of the Illinois and Michigan canal, by the breaking of the south bank of said canal and the lock at Marseilles, in said canal, not being opened up in time to prevent the flood waters from accumulating and backing up, so that the lands of claimants was overflowed and their crops destroyed; that this flood occurred some time in the first part of the month of August, 1924, the reasonable value of the crop destroyed being $1442.50.

The demurrer filed by the Attorney General of the State of Illinois, is as a matter of law, sustained.

On the grounds of social justice and equity, we award claimant the sum of $1442.50.

(No. 894—Claimant awarded $3,500.00.)

COUNTY OF LASALLE, STATE OF ILLINOIS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

NON-LIABILITY OF STATE—*State not liable for overflow of water, causing damage, from Illinois & Mich. Canal.* The decision of the court in the case of *Allen v. State, supra,* governs this claim.

LEE O'NEIL BROWNE, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DEHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for damages sustained by claimant, on its premises located a short distance west of the city of Ottawa, and known as the "LaSalle County Poor Farm", or "Home", by reason of the overflow of a canal owned by the State of Illinois; said damage having occurred on or about September 7, 1924, and as a result of which the crops raised on said farm were destroyed, the reasonable value of said crops being $3,500.00.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

We award claimant the sum of $3,500.00, on the grounds of equity and social justice.

(No. 898—Claimant awarded $2,857.80 with interest.)

RAYE DIAMOND AND OSCAR G. FOREMAN, TRUSTEES OF THE LAST WILL AND TESTAMENT OF HARRIS WOLF, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

INHERITANCE TAX—*when claimant entitled to refund. Sec. 25.* Where certain contingencies named in a will happen and afterward the estate is re-assessed by reason thereof, in proper proceedings, and the tax reduced, claimant is entitled to a refund of the excess tax paid.

HARRY C. DIAMOND, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimants, Raye Diamond and Oscar G. Foreman, trustee of the last will and testament of Harris Wolf, deceased, bring this suit for the refund of inheritance taxes under Section 25 of the Inheritance Tax Laws of the State of Illinois.

The decedent died testate, September 21, 1911, domiciled in the city of Chicago, in Cook county, Illinois, and claimants were duly appointed and qualified as executors of said estate.

Their inheritance being assessed and entered by the County Judge of said county, same was paid by executors to the amount of $8459.89.

Certain contingencies named in the will happened later and thereby necessitated a re-assessment, and on proper proceedings in the county court of said county of Cook, the estates were re-assessed, and by reason of such re-assessments the estate became liable to refund to claimants, the sum of $2857.80 with interest at the rate of 3% from 28th day of March, 1914, as shown by certified copy of the record of the proceedings in said court.

There is no contest in behalf of the State, and the Attorney General in his reply admits the correctness of the claim.

The evidence supports the claimant's claim and it is ordered that claimants be awarded the sum of $2,857.80 with interest thereon at the rate of 3% per annum from 28th day of March, 1914.

(No. 900—Claimant awarded $375.00.)

R. V. DELAY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1923.

MILITARY SERVICE—*when State not liable.* **Although there may be no legal liability against the State for injuries sustained by a member of the Illinois National Guard, while in discharge of his duty, yet an award may be entered in his favor as a matter of equity.**

HAVEN & HYLE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for injuries sustained by claimant while in the discharge of military duties for the State of Illinois, and declaration sets forth that on October 29, 1922, while on duty in Co. I, 130th Infantry with his company at the Chicago & Alton Railroad shops at Bloomington, Illinois, in the evening of said date, it being dark, he was walking along the track of the said railroad company, in the exercise of due care and caution, to inspect relief, and that while so crossing said track, he was struck by a handcar and knocked to the ground, and thereby became greatly bruised, hurt and wounded and divers bones in his body were broken, and since said time he has been unable to attend to his affairs and occupation.

The demurrer filed by the Attorney General of the State of Illinois, is, as a matter of law, sustained.

The amount of the claim $375.00, we believe to be equitable and just, and we accordingly award claimant the sum of $375.00.

(No. 901—Claimant awarded $398.75 with interest.)

ROBERT O. BUTZ, THEODORE C. BUTZ AND HERBERT R. BUTZ, EXECUTORS OF THE LAST WILL OF OTTO C. BUTZ, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

INHERITANCE TAX—*when claimant entitled to refund. Sec. 25.* Where an inheritance tax has been assessed and paid, under Sec. 25, Inheritance Tax Law, and afterwards, upon proper proceedings, the estate was reassessed by the county court, and the court finds that claimants are entitled to a refund, an award will be made for the excess tax paid.

BUTZ, VON AMMON & MARX, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimants, Robert O. Butz et al., brings this suit to procure from the State, a refund of inheritance tax in the sum of $398.74 with 3% interest per annum from October 28, 1920, under Section 25 of the Inheritance Tax Laws of Illinois.

Otto Butz died testate in Cook county, Illinois, and claimants were appointed by will executors therein, and afterwards duly qualified as executors.

The inheritance taxes were fixed and order made by county judge of said county; and on the 28th day of October, 1920, paid the taxes then shown by order of the court to be due to-wit: $19,306.08, less 5% discount allowed by statute in such case made and provided making a net tax so paid $18,340.78.

Application was made in due time, to the county court of said county and by order of the county court the estate was *reassessed;* that upon such *reassessment* the executors, as shown by order of said county court, the claimants became and are entitled to a refund under Section 25 of said act in the sum of $398.74. Certified copies of will, letters, assessments and orders of the county court are filed and considered herein in evidence and same prove the claimant's demand, to which the Attorney General makes no objection, but consents in writing to the allowance of said sum.

The court accordingly awards claimants, executors of said estate, the sum of $398.74 with 3% interest per annum thereon from October 28, 1920, to this date.

(No. 902—Claimant awarded $171.43.)

THE TEXAS COMPANY, A CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

FRANCHISE TAX—*when claimant entitled to refund.* There being no dispute as to the facts and law in this case the court enters an award in favor of claimant.

T. J. SULLIVAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for the refund of franchise tax paid into the office of the Secretary of State erroneously and it appearing by stipulation filed by the Attorney General that the claimant is entitled to a refund in the sum of $171.43, and therefor by such consent and from the examination of the records this court recommends an allowance of the sum of $171.43 to the claimant.

(No. 905—Claimant awarded $250.00.)

FRANK BRAWNER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

RESPONDEAT SUPERIOR—*State not liable.* While the State is not liable for the torts or negligence of its employees, an award may be made to claimant for damages caused by the negligence of an employee of the State.

L. H. VOGEL, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for damages sustained to the automobile of claimant, by reason of collision with an automobile owned by the State of Illinois, in the Highway Department of said State and being driven by one Fred Little, an employee and servant of the said Highway Department and of the State of Illinois, said automobile so driven by Fred Little being driven

recklessly and in violation of an ordinance of the city of Springfield; damages to claimant's car amounting to $250.

Statement filed by the Attorney General of the State of Illinois, recites that said claim has been investigated by the Department of Public Works and Buildings and said department reported that it was equitable and just to the extent and for the amount as submitted to this court on behalf of claimant.

We accordingly award claimant the sum of $250.00, on the grounds of social justice and equity.

(No. 906—Claimant awarded $28.00.)

G. H. SCHANBACHER AND H. A. SCHANBACHER, PARTNERS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

SERVICES—*when State liable.* Where services have been performed for the State at the request of its authorized department, and the work is approved and accepted by the State, claimant is entitled to an award for the services performed.

BARBER AND BARBER, for claimant.

OSCAR E. CARLSTROM, Attorney General; George C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimants, G. H. Schanbacher and Son, claim that they did services for the State at its request, to-wit: Painting the canvas pedestals of the statues of Yates and Palmer on the Capitol grounds.

The work and material are shown to be worth $28.00. The work was approved and accepted by the defendant through its supervising architect of the Department of Public Works and Buildings.

No available funds could be found with which to pay the bill and the claim being filed in this court the Attorney General consents in writing, to its allowance.

The court awards the claimant the sum of $28.00.

(No. 907—Claimant awarded $2,500.00.)

LESLIE OWENS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

RESPONDEAT SUPERIOR—*no liability. Social justice and equity.* Although the State is not liable for injuries sustained by its employees in the discharge of their duty, yet an award may be made to such employee on the ground of social justice and equity.

W. ST. JOHN WINES, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This is a suit brought by Leslie Owens, claimant, for personal injuries received while in employment of the State and while in discharge of his duties as game warden of the State. The facts in the case are about as follows:

On October 31, 1924, claimant as fish and game warden of Illinois was ordered by W. J. Stratton, chief game and fish warden, to go to a cabin boat on the Illinois river near Glasford in Peoria county to investigate a violation of the fish and game laws of Illinois and in pursuance of said orders went to said boat and to the lodging place of one Mike Vegetta, whom he informed as to his business, stating who he, claimant was.

Then and there the said Vegetta made an assault upon claimant with a knife, and claimant was compelled to shoot him twice before he checked the attack.

Claimant threw up his arm to ward off the attack of Vegetta with the knife and shot himself through the left forearm; and a desperate struggle ensued and claimant shot a second time so that he discontinued the struggle, and was taken into custody, and claimant was forced to seek medical aid at once, at the hospital at Peoria for a good while and then removed to the Presbyterian Hospital at Chicago where his arm was operated upon again and treated for a bad arm and wrist, all of which services cost him $500.00.

The court ordered that claimant be brought before the court for oral and physical examination. Mr. Owens and Mr. Stratton both came before the court and gave oral testimony to the above effect. They both state that claimant has practically lost use of left arm; and on demonstration it is shown

to the court that he has little use of the arm. Mr. Stratton confirms all this in his oral evidence before the court. It is evident to the court that claimant, at time he received the injury, was in line of duty, in the employment of the State, acted in necessary self defense and accidentally without fault on his part, wounded himself. The Attorney General was present in court at the time of taking this evidence, and makes no objection to allowance of claim, although a demurrer is filed. Upon such hearing the court hereby awards claimant the sum of $2,500.00.

(No. 908—Claimant awarded $2,500.00.)

MARY HASBROUCH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

RESPONDEAT SUPERIOR—*social justice and equity.* The State is not liable for injuries sustained by its employees while in the discharge of their duty, but on the ground of social justice and equity an award may be made to such employee.

FRANK O. HANSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a case brought on account of injuries sustained while she was regularly employed as a civil service nurse in the Children's Nursery at the Illinois Soldiers' and Sailors' Orphans Home; that during her employment and while in the course of employment she slipped upon an icy walk, fell and injured her hip, breaking the hip bone; that since said accident she has suffered intense pain and is still severely and permanently incapacitated. It further appears that the claimant was a valuable and faithful servant of the State and that she is without means of support, other than the charity of her friends and her community.

It is the opinion of this court that in equity and good conscience an allowance should be had in this case as it is our belief that a reasonable protection should be given by the State to those of her servants who were injured in the line of duty. It is therefore recommended that claimant be allowed the sum of $2,500.00.

(No. 910—Claimant awarded $5,861.41.)

LENNOX-HALDEMAN COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

CONTRACT—*when State liable.* **Where extra material has been furnished and extra work performed by claimant under a contract between it and the State, and such material and work has been accepted by the State through its authorized department, the State is liable for such extra work performed and extra material furnished.**

EDWARD J. SMEJKAL, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

The claimant, Lennox-Haldeman Company, a corporation, incorporated under the laws of the State of Illinois, under and by the terms of a certain contract made by and between it and the defendant, State, a copy of which is incorporated in the declaration. It alleges that it entered into a certain written contract with the State of Illinois through the Department of Public Works and Buildings, Cornelius R. Miller, director, to provide all the materials and to perform the work shown on the ceilings, metal lath and plastering, for the main building and Orthopedic buildings of the Research and Educational Hospitals, South Wood, West Polk and South Lincoln Streets, Chicago, Illinois, prepared by Richard E. Schmidt and Hugh M. Garden under the direction of the Division of Architecture and Engineering of the Department of Public Works and Buildings of the State of Illinois, Edgar Martin, supervising architect, and to do every thing required by the general conditions of the contract, the specifications and drawings, etc., as shown in Exhibit "A" attached to the declaration. Article 3 of the contract showed that the owner was to pay contractor for the performance of the contract $103,000.00 subject to additions and deductions as provided in the general conditions of the contract.

Article 18 provided for plaster patching etc., etc., the work to be done under the supervising architect and his employes; and was to be paid therefor the said contract price, "$103,000.00" plus any amount earned by it for extra work ordered and approved by the supervising architect and in addition was

to be paid for patching plaster damaged by wokmen of other contracts when ordered by the supervising architect or his employes an amount equal to 15% of the amount expended by it for labor and material necessarily employed and furnished by it in so doing.

The claimant further alleges that at the direction of the supervising architect it furnished labor and materials and did plaster patching within the provisions of the contract as per bills rendered to the supervising architect on May 1, 1924 and at various other times from time to time. It earned $103,000.00 under original contract price and furnished extras as shown and admitted by the Attorney General, amounting in all to $115,658.35; that it has been paid a total of $108,796.94, leaving a balance due claimant of $6,861.41 as shown by its Exhibit "B" attached to declaration.

A claim for the balance was submitted to the Department of Public Works and Buildings of the State; but no final action was ever taken thereon by said department. The Department of Public Works and Buildings through its proper officers and the Attorney General are agreed that the said balance is due and payable to complainant as claimed by it less a credit of $1000.00 for certain work not yet finished. The Attorney has thoroughly investigated the matter and consents in writing to an allowance to claimant in the sum of $5861.41. From the evidence and consent of the Attorney General, the court finds for the claimant, and awards it the sum of of Public Works and Buildings through its proper officers $5,861.41.

(No. 911—Claimant awarded $542.77.)

INDIANA BRIDGE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

SERVICES—*when State liable.* The State is liable for services rendered and material furnished in the erection of its Armory building for the Illinois National Guard.

SAMPSON AND GIFFIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed to recover for services rendered in connection with the erection of an Armory building for the Illinois National Guard for additional materials, etc., amounting to $542.77 and appearing that the acting supervising architect expresses the opinion that the claimant is entitled to the award claimed and the Attorney General acting upon the opinion of the said architect consents to the award.

Therefore, it is considered by the court that the claimant be allowed the sum of $542.77.

(No. 912—Claimant awarded $500.00.)

NICHOLAS M. WHITFIELD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

MILITARY SERVICE—*when claimant entitled to award.* The court reviews the evidence in this case, and enters an award in favor of claimant.

CHARLES MCBRIAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought on account of injuries sustained while on duty as a private of the first class in Troop F of the 106th Cavalry of the Illinois National Guard. It appears

that said claimant while in the course of his duty, with due care and caution for his own safety while leading a horse from the stable, was kicked by a horse led by another Private, breaking the leg of claimant about six inches above the ankle, totally disabling the claimant for about five months. The claimant alleges damages in the sum of $900.00. The defendant the State of Illinois comes and makes no denial of the cause of the accident or the extent of the injury claimed and leaving the matter of allowance to the discretion of this court.

The claimant appeared in open court and was examined by members of this court as to the cause and the extent of the injury and the court finds that the claimant was injured as alleged and was disabled for a considerable length of time, and after taking the matter under advisement, this court recommends that the claimant be allowed the sum of $500.00.

(No. 913—Claimant awarded $2,500.00.)

JERRY F. CONDON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

MILITARY SERVICE—*claimant entitled to award. Equity and social justice.* The court reviews the evidence in this case, and no objection being made by the State, enters an award in favor claimant on the ground of equity and social justice.

DONOVAN, BRAY & GRAY, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim to recover damages for injuries sustained by claimant while in the service of the State of Illinois, in the discharge of military duty. Declaration avers that in the month of August, 1923, he accompanied the Illinois State Militia, with the 129th Illinois Infantry, for military duty and service at Camp Grant, Illinois; that on the night of August 30th, 1923, he was the Provost Sergeant of his company at said Camp Grant, while in the performance of his military duties as such Provost Sergeant and while making the rounds of the camp of said company, and while in the exercise of ordinary care and caution for his own safety, he necessarily and unavoidably came in contact with a tent rope which, ow-

ing to the extreme darkness, he was unable to see and because of such contact he sustained a fall which resulted in severe painful and permanent injuries, i. e., the fracture of the fibula and tibia bones of his leg; that the accident occurred about 3:30 A. M., on the morning of September 1st, on which day his company was about to break camp; that he was taken to a hospital at Rockford, where he received medical care and attention and was later removed to his home at Pontiac, Illinois, and there also was under the care of a physician.

No demurrer is filed by the Attorney General, he having filed written assent to allowance of an award.

On the grounds of equity and social justice, we award claimant the sum of $2,500.00.

(No. 914—Claimant awarded $13,975.43.)

SCHNEPP & BARNES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

SERVICES—*when State liable.* **Where work has been done on behalf of the State, and is accepted by an authorized department of the State, an award will be made in favor of claimant.**

SCHNEPP & BARNES, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed to recover for printing done on behalf of the State of Illinois, and it appearing from the statement of H. L. Williamson, Superintendent, Division of Printing, Department of Public Works and Buildings, and from the statement filed by the Attorney General of the State of Illinois, the claim is just and meritorious and should be allowed.

We award claimant the amount asked for in said declaration, to-wit: Thirteen Thousand Nine Hundred Seventy-five and 43/100 Dollars ($13,975.43).

(No. 915—Claimant awarded $229.35.)

SCHMIDT CONSTRUCTION COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

CONTRACT—*when State liable.* The decision of the court announced in the case of *Schnepp & Barnes v. State, supra,* governs this claim.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed by the Schmidt Construction Company. It appears from letters introduced in this case and from statement made, that the Schmidt Construction Company are contractors of street pavements; that said company paved 19th and 20th Albany, Marshall Blvd., wherein the Illinois Industrial Home for the Blind, a State Institution, own property; that all work has been completed and accepted by the authorized agents of the State of Illinois and that the amount of the claim is $229.35.

The Attorney General, in behalf of the State, submits herewith a letter from C. H. Jenkins, Director of Public Welfare, in which the said Department feels that this is a just claim and should be allowed. The Attorney General therefore consents to an award in favor of the claimant, the Schmidt Construction Company in the sum of $229.35.

We therefore award the claimant the sum of $229.35.

(No. 916—Claimant awarded $235.00.)

DR. S. F. HENRY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

SERVICES—*award may be made for medical services.* Where medical services have been performed by an employee of the State who is injured in the course of his employment, an award may be made for such services.

PARKER & BAUER, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for medical services and surgical aid given to D. L. McGregor who was on the 18th day of August, 1924,

employed by the State of Illinois in the Department of Public Works and Buildings. It appears that while said laborer was employed in the service of the State he received injuries and required the medical attention given.

There is no contention but that the services were performed and that the claim was reasonable and was based upon the rule of usual and customary charges for such services. Therefore it is considered by the court that said claimant be allowed the sum of $253.00.

(No. 917—Claimant awarded $222.50.)

ST. ANTHONY'S HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

SERVICES—*award may be made.* The decision of the court announced in the case of *Henry* v. *State, supra*, governs this claim.

PARKER & BAUER, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for hospital service furnished for one D. L. McGregor with the knowledge and consent of the State of Illinois through its proper officers; that the said patient was injured while in active service in the employ of the State of Illinois in the Department of Public Works and Buildings. It appears to the court that the Chief Highway Engineer examined the claim which is made in the sum of $222.50 and finds that the same is just and reasonable.

Therefore it is considered by the court that claimant be allowed the said sum of $222.50.

(No. 918—Claimant awarded $85.54.)

FRANK LUTZ, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

RESPONDEAT SUPERIOR—*when award may be made.* There being no objection to this claim by the State, the court enters an award in favor of claimant.

W. S. JEWEL, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant, Frank Lutz, a resident of Fulton county, State of Illinois, files claim for money expended by him for the repairs upon a certain Cadillac automobile, the damage to which was occasioned by accident in manner following, according to allegations of claimant. The claimant alleges that while driving the said car on one of the hard surface roads in the State of Illinois, commonly known as the Peoria-Springfield road and driving in the direction of Springfield, Illinois, on said hard road, the claimant met one Charles Wheymer an employe of the State of Illinois driving a State truck, property of the State of Illinois and driving in a northerly direction. Claimant was driving in a southerly direction and was driving on the right side of the road, that the said Charles Wheymer driving said truck as aforesaid was at a point almost adjacent to the claimant and when the two machines were about to pass something happened to the State truck which turned directly towards claimant striking the left side of the car, tearing off both the front and rear fenders on the left side of said car and otherwise damaging said machine. The driver of said State truck explained to claimant that the accident was the result of the trouble of tire and wheel of said auto truck which resulted in his being unable to control the truck. Claimant further alleges that his claim and damages amount to $85.54.

It appears that there is no objections made as to the amount of claim or defense as to the cause of the accident. Therefore this court recommends that claimant be allowed the sum of $85.54.

(No. 920—Claimant awarded $2,500.00.)

W. E. CROSIAR, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 1, 1925.

CONTRACT—*when State liable.* The State is liable for work performed and material furnished on its State building.

C. R. MILLER, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is an action brought to recover for work performed on certain State buildings and materials furnished. It appears that the Department of Public Works and Buildings carefully examined the claim and have consented to its payment. The amount that is agreed upon as being due by both the claimant and the Department of Public Works and Buildings is $2,500.00, and it further appears that the Attorney General consents to an award in that amount.

Therefore this court recommends that the claim be allowed in the sum of $2,500.00.

(No. 903—Claimant awarded $4,273.20.)

EDWARD O'CALLAGHAN AND HENRY O'CALLAGHAN, PARTNERS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1925.

CONTRACT—*when State liable.* Where a contract has been made between claimant and the State for certain work, and the contract is performed by claimant, according to its term, and the contract price is paid, but during the progress of the work the State through its authorized agent orders certain specific work to be performed not stipulated in the contract and such additional work is performed and material furnished for same, claimant is entitled to compensation for such additional material furnished and work performed.

SIMS, WELCH, GODMAN & STRANSKY, for claimant.

OSCAR E. CARLSTROM, Attorney General; George C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

Claimants, Edward O'Callaghan and Henry O'Callaghan, partners, doing business under firm name and style of O'Cal-

laghan Brothers, claim $7,192.30 as disclosed by the statement of their claim, and as shown by the evidence.

The claimants are plumbers and contractors, and as such, on to-wit: the 20th day of November, A. D. 1922, entered into a contract with the State of Illinois by its proper officers to do certain work, to-wit: Plumbing for a building shown as the Research and Educational Hospital of the State of Illinois, in Chicago, Illinois, under a contract of $145,600.00. The contract was completed and said contract price paid. However during the progress of the work, the State by its said duly authorized agents ordered other certain specific work performed in addition to that stipulated in the contract, and materials also to be furnished and added by claimants which they did as directed, and for which they charge the State the sum of $7,192.30. This bill was presented to the State's building department and upon an investigation and analysis of same by the proper officers of said department, they admitted the correctness of the claim, less $2,919.10, and agreed that the State should pay them the sum of $4,273.20.

The Attorney General has investigated the matter also and consents to allowance of said last named sum. From the weight of the evidence in the case it seems that claimants are entitled to said sum last aforesaid. The court accordingly awards the claimants the sum of $4,273.20.

(No. 827—Claimant awarded $119.70 with interest.)

CARLOTTA S. SIGNOR AND R. LEMUEL BLOUNT, TRUSTEE, Claimant, *vs.* STATE OF ILLINOIS, Respondent

Opinion filed September 16, 1925.

INHERITANCE TAX—*when claimant entitled to refund. Sec. 25.* Where a tax has been assessed against a succession, and paid, and afterwards upon proper proceedings in the county court, it appears that certain contingencies upon which the original assessment of the tax was made, had not occurred, and the estate was reassessed and the tax fixed upon the re-assessment; *Held.* Claimant entitled to a refund of the difference between the amount of the tax paid under the original order of the court and the amount found due upon the re-assessment of the tax.

DOWNER MCCORD, for claimant.

EDWARD J. BRUNDAGE, Attorney General, GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

R. Lemuel Blount, trustee of the estate of Kate Ward Bensley, deceased on the 26th day of July, 1916, paid to the

treasurer of Cook county, the sum of $217.90 in full of inheritance taxes levied and assessed against the succession occurring by virtue of the death of Kate Ward Bensley, deceased.

On the 23d day of June, 1923, in the County Court of Cook county, Illinois, in the matter of inheritance tax appraisement in said estate of Kate Ward Bensley, deceased, it was ordered adjudged and decreed that inasmuch as certain contingencies upon which the original inheritance taxes were levied and assessed, not having occurred, the said estate was entitled to re-assessment of said inheritance taxes under Sec. 25, Chapter 120, in the Revenue act of the State of Illinois, and it was therefore ordered that said taxes be re-assessed in accordance with a certain schedule set out in the order, a copy of which is presented in evidence, making the total amount of the assessment $79.40.

On January 17, 1917, the said R. Lemuel Blount was duly appointed trustee of said estate and duly qualified, in the case of *Blount executor* v. *Christianson et al.* Carlotta S. Signor was a niece of the said decedent, Kate Ward Bensley, and a legatee under her will and the entire original assessment of inheritance tax was assessed against her legacy, which assessment was paid by the executor and trustee, and under the re-assessment of the inheritance tax, as ordered by the County Court there is a refund due to the said Carlotta S. Signor amounting to $119.70 with interest thereon at the rate of 3% per annum from the 26th day of July, 1916.

The Attorney General consents in writing to an award as claimed. The evidence sustains the claim, and the court accordingly awards said Carlotta S. Signor and R. Lemuel Blount, trustee, the sum of $119.70 together with interest thereon from the 26th day of July, 1916, at the rate of 3% per annum until paid.

(Nos. 517-517a—Claim denied.)

DAVENPORT FISH COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1920.

RESPONDEAT SUPERIOR—*State not liable for the torts of its employees.* The doctrine of *respondeat superior* is not applicable to the State and it is not liable for the torts of its agents or officers.

POLICE POWERS—*State not liable for injuries resultant to the enforcement of police powers.* The State is not liable for the acts of its officers in the enforcement of the police powers of the State.

MARSHALL & MARSHALL, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The Davenport Fish Company, an Iowa corporation having its principal place of business in the city of Davenport, is engaged in the wholesale buying and selling of fish, oysters and celery and like products in Iowa and various other states, including the State of Illinois. This company filed two claims for damages against the State, one for $266.00 and one for $408.62. The claims are based on the seizure and confiscation by representatives of the Department of Agriculture, Division of Game and Fish, of two shipments of fish to Chicago, and seventeen shipments to other cities and villages in Illinois. These shipments were all made by claimant from Davenport in the State of Iowa.

The Attorney General filed a general demurrer to the declaration in each case, and evidence has been taken as if pleas of general issue had been filed. The State introduced no evidence and contends that it is not liable for the damages claimed. The principles involved in the two cases are the same, and they have been consolidated and heard as one.

The evidence shows that on October 31, 1919, the claimant shipped by express from Davenport, Iowa, to the Booth Cold Storage Company, of Chicago, 1000 pounds of black bass and on the 7th day of November, 1919, 330 pounds of black bass to be frozen. The two shipments were valued at $266.00. They were shipped by claimant to the Booth Cold Storage Company for freezing purposes only and, when frozen by that company, were to be reshipped to claimant in Iowa to

supply its trade. The fish were not caught in Illinois, and were and remained the property of the claimant, and were never intended to be sold in this State.

The officers of the Division of Fish and Game of the Department of Agriculture confiscated the fish while they were in the possession of the Booth Cold Storage Company on the grounds that such possession was in violation of the Game and Fish Code, approved June 24, 1919, which was then in force in Illinois. (Laws 1919, Page 26.)

The evidence further shows that in the months of April and May, 1920, claimant made seventeen other shipments of fish, consisting of catfish, buffalo, perch, bullhead and carp, from Davenport, Iowa, to merchants and dealers in various cities and villages of Illinois for retail trade, amounting in all to the sum of $408.62. These seventeen shipments of fish were also confiscated by the officials of the Division of Fish and Game before they were delivered to the consignees.

Claimant contends that these shipments of fish constituted interstate commerce and that the confiscation of them by the officials of the State was unlawful and that the State is liable for the damages sustained on account of such unlawful confiscation by the State officials. The Attorney General insists that, even if the confiscation be conceded to have been unlawful, the State is not liable—that the government is never liable for the wrongful acts of its officers and employees.

Section 18 of the Game and Fish Code, approved June 24, 1919, provides that it shall be unlawful for any commercial institution, commission house, restaurant or cafe keeper, or fish dealer, to have any black bass in possession, whether caught or taken within or without the State, or lawfully or unlawfully caught or taken. The same section makes it unlawful to buy, sell, ship or receive for shipment, or for any commercial institution, commission house, restaurant or cafe keeper or fish dealer, to have in possession any catfish, carp, bullhead, etc., between the 1st day of April and the 1st day of June, both inclusive, of any year. Section 80 of this Act provides that all fish sold, shipped or had in possession contrary to any of the provisions of the Act shall be contraband and subject to seizure and confiscation by any officer or employee of the department. Under these provisions of the Game and Fish Code of 1919 the officers were justified in seizing and confiscating the fish.

Claimant, however, insists these provisions of the statute are unconstitutional as applied to the facts in this case. The presumption is that the law is constitutional, and courts will not declare an act of the Legislature unconstitutional unless a correct decision of the question involved requires such construction. Were this a suit against the officers who confiscated the fish, the constitutionality of this law might be involved. But in this action against the State it is not.

These shipments of fish were confiscated by the officers in the exercise of the police powers of the State. Counties and other subdivisions of the State for governmental purposes are not liable for the wrongful acts of their officers while endeavoring to enforce the police powers. No government is liable for injuries caused by the acts of its officers, whether such injuries be caused by the negligence of the officer or by his misfeasance, laches or unauthorized exercise of power. (*Gibbon* v. *U. S.*, 8 Wall 268; *Minear* v. *State Board of Agriculture*, 259 Ill. 549; *Hollenbeck* v. *Winnebago Co.*, 95 Ill. 148.) In the case of *Chas. C. Robbins (Inc.)* v. *State* (opinion filed in January, 1925,) this same question was involved, and this court said "that the State is not liable in such cases for the torts of its agents or any official of the State, has been repeatedly held by this court, the State courts and the U. S. Sup. Court." Under the principles announced in these cases claimant has no cause of action. The demurrer is therefore sustained in each case and the case dismissed.

(No. 769—Claimant awarded $98.00.)

Cleveland, Cincinnati, Chicago & St. Louis Railway Company, a Corporation, Claimant, *vs.* State of Illinois, Respondent.

Opinion filed September 14, 1926.

Demurrage—*when State liable.* The State is liable for a reasonable storage charge after notice given to the proper department by the railroad company.

George B. Gillespie, for claimant.

Oscar E. Carlstrom, Attorney General; S. S. DuHamel, Assistant Attorney General, for respondent.

Mr. Chief Justice Clarity delivered the opinion of the court:

Claimant was on the 23d day of May, 1921, operating its line of railroad in and through the State of Illinois and

through the village of Ridge Farm, Vermillion county, Illinois, and it appears that said railroad transported a car containing gravel billed to the State Highway Department; that said billing was directed to the Department of Highway at Ridge Farm, and that notice was given of such shipment to agents of the defendant.

It appears to this court that the gravel in question was stored and kept after such notice was given and according to the laws of the State of Illinois the claimant would be required to make charges for such storage, even if they were disposed to waive their claim and from the record we are of the opinion there is a legal liability.

Therefore the only question remaining for the court to consider is the amount of the award and from the evidence the court must follow the tariff schedule filed and from all the evidence it appears that claimant is entitled to recover $98.00. Therefore claim is allowed in the sum of $98.00.

(No. 820—Claim denied.)

JAMES GARNS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1926.

GOVERNMENTAL FUNCTION—*when State not liable. Hard roads.* The State in the construction of its hard roads exercises a governmental function and is not liable for injuries sustained by its employees therein, while in the discharge of their duty.

PRACTICE—*rule with reference to recovery.* It is fundamental that a party cannot recover by making out one case by his pleading and another different one by his evidence.

SAME—*claimant must prove case by preponderance of evidence.* Claimant must prove by a preponderance of the evidence that he was injured in the manner and at the time alleged in his declaration, and that he sustained the injury while in the course of his employment.

JAMES P. ST. CERNEY AND W. A. POTTS, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The declaration in this case was filed June 30, 1924. It alleges that the claimant, while engaged as a laborer in the employment of the State on the hard road between Pekin and Orchard Mines in Peoria county, on the 2d day of July, 1923, in elevating a concrete post, slipped and fell heavily to the

ground and dislocated his hip, causing a permanent injury and rendering him unable to do any work. To this declaration the State has filed a general and special demurrer. Evidence was taken for both the claimant and the State.

There is no evidence in this record that in any way tends to prove claimant suffered a dislocated hip as charged in the declaration. The only evidence that claimant received an injury is his own statement. He testified that about 11 or 12 o'clock on the 2d day of July, 1923, he, with others, was engaged in setting concrete posts along the hard road, and that while he and one MacMahon were elevating a post to put it in the ground MacMahon gave it a little push, throwing the weight on him, and one of his feet slipped and the weight of the post just spread him apart and hurt his hip; that at the lunch hour he could not sit down to eat because of the pain, and the foreman, Mr. Buck, asked why he did not sit down and he told him he had hurt his hip putting in a post; that he was given lighter work during the afternoon, and when he got home sent for a physician; that his physician, Dr. Balcke, came the next morning and treated him, and has been treating him ever since for sciatic rheumatism.

Claimant is not corroborated in his statement about the injury by any of the others who were present. A. A. MacMahon, Martin Horton and Louis A. Buck were all present working with claimant at the time he says he received the injury, Buck being the foreman. MacMahon testified that if claimant received any injury, he did not know it, that he made no statement to him about it and continued to work with him at the same character of work the remainder of the day. Mr. Buck testified that he did not learn claimant had received an injury, that claimant did not tell him he had been hurt and that he continued to do the same character of work the remainder of the day, there being no lighter work to be done. Mr. Horton, who was working with them, also testified that claimant received no injury that day and that he continued to do the same kind of work during the afternoon as he had in the forenoon. Claimant never returned to work after the 2d of July, and testified that he has been unable to work since that time and under the care of a physician. Buck testified that three or four weeks before the day claimant alleges he received his injury, while the men were at lunch, claimant was walking around eating, and he said to him "Why don't you sit down and eat your dinner"? and claimant replied "My

hip hurts." Andrew Franklin also testified that he heard this conversation and that it occurred about a month before claimant quit work. Claimant admitted in his examination that some two or three weeks before he was injured he stated he had lumbago. Dr. Balcke testified that when he called to see claimant on the 3d of July he was complaining of pains in the small of his back and that he treated him for lumbago, but that when he called the next time claimant said the pain had gone down his leg and he diagnosed the case as sciatic rheumatism and had been treating him for that ever since. He also said there was no swelling or other evidence of injury that could be seen, and that his hip was not dislocated.

It is a fundamental principle that a party cannot make out one case by his pleadings and another by his evidence. Claimant's declaration alleges he received a dislocated hip, which declaration was sworn to by claimant on the 27th day of June, 1924. Claimant's evidence does not sustain this claim. In fact, there is no evidence that his hip was dislocated or injured in any way. We have carefully read the evidence in this case and do not believe claimant is entitled to recover for any injury. Before he is entitled to recover he must show by a preponderance of the evidence that he received an injury arising out of and in the course of his employment. The preponderance of the evidence shows that he was not injured in the manner and at the time he claims. It does not seem reasonable that claimant could have received as serious an injury as he says he did and the men working with him not have known it. He was 58 years old and admits that he had previously suffered from lumbago. The evidence tends to show that he may have had an attack of lumbago which was followed by sciatic rheumatism, but it does not show that it was caused by any injury received by him arising out of and in the course of his employment by the State. Claimant having failed to make the proof required by law, his claim is disallowed.

(No. 823—Claimant awarded $5,660.00.)

MODERN SYSTEMS CONSTRUCTION AND SUPPLY COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1926.

CONTRACT—*when State liable for work and material.* The State is liable for work performed and material furnished, under contract with claimant, on its State building where the contract is performed according to the plans and specifications proposed by the Division of Architecture of the Department of Public Works and Buildings.

SAME—*when the State is not liable.* The State is not liable for extra work performed, where it is performed without extra cost to the contractor.

SAME—*State not liable for interest on invested capital.* The State is not liable for interest on invested capital and equipment, as such interest is speculative in character.

SAME—*when not liable for loss to contractor.* The State is not liable for losses due to insufficiency of labor caused by interference with job organizations.

SMALL, BRATTON & SCHROEDER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Asst. Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

On June 15, 1921, the Modern Systems Construction and Supply Company, claimant herein, entered into a contract with the State of Illinois whereby it agreed to provide all the materials and to perform all work for the general work of buildings for the Alton State Hospital at Alton, Illinois, for $326,583.00. The work was to be done according to the drawings, plans and specifications therefor prepared by the Division of Architecture of the Department of Public Works and Buildings, and was to be substantially completed by March 1, 1922. The contract fixed the prices of labor and materials upon which the total contract price was based and bound the contractor in no event to pay more than 65 cents per hour for hod carriers and mortar mixers, 62½ cents for other common labor and $1 per hour for brick masons, stone masons, iron workers, lathers, sheetmetal workers, carpenters, painters and plasterers, and provided that the net savings effected should be deducted from the contract price. Under the terms of the contract the time of completion of the work might be extended by the supervising architect, and it was extended by him 60 days.

Two other contracts were entered into between claimant and the State, the first on October 25, 1921, for the installation of bell traps and drain pipes for which claimant was to receive $2000.00, and the second on November 5, 1921, for certain substituted materials for which claimant was to receive $1400.00.

On December 9, 1921, the State let the contract for the general plumbing work of the entire building to E. Baggott & Co. In the latter part of March, 1922, the plumbers went on a strike. In October of that year E. Baggott & Co. gave up their contract and the State took over the plumbing work and later finished it.

Claimant contends that the failure to have the plumbing done in proper time compelled claimant to delay its work and that during such delay the prices of materials and labor increased, its machinery and fixtures were idle, its organization disrupted and its money tied up, etc., for which it has filed this suit. Attached to its declaration are 22 separate claims or "invoices" aggregating the sum of $40,144.53 which claimant contends the State owes it. This amount includes certain items mentioned in the invoices for extra work and material furnished by claimant and for which it had no written contract with the State.

The Attorney General filed a general demurrer to the declaration. After this demurrer was filed it was stipulated by the parties that invoices 1, 4, 5, 6, 7, 8, 9, 10 and 15 and also an item of $379.46, which was not paid on final certificate because of lack of funds, are correct and should be allowed. The total amount of this item and invoices, which the Attorney General agrees is a just claim against the State, is $4,371.26. This stipulation of the Attorney General is an admission that there is some equity in claimant's case, and the demurrer will be overruled and the cause heard as if the general issue had been filed by the State.

In its declaration claimant alleges there was certain other work in and about the buildings of the State at Alton and also extra work done by it for which no written contracts were entered into between it and the State.

Both claimant and the State have taken evidence, including a large number of exhibits, on the question of these verbal agreements. After a careful consideration of all the evidence and exhibits introduced in this case, both on the part of the claimant and of the State, we find that claimant has failed

to prove, by a preponderance of the evidence, the verbal agreements to do such extra work, and the claims for it are refused.

The invoices not included in the stipulation are 2, 3, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21 and 22 and they will be decided in that order.

Invoice No. 2 is a claim for clearing out tunnels and openings left for the plumbers and for bricking up these openings. The specifications require the contractor to leave openings for other trades to do their work and then to close up such openings so that the several parts will properly fit together. The specifications also require the contractor to keep clean all parts of the buildings, and the tunnels are a part of the buildings. While the evidence shows there was an oral understanding between the claimant and a representative of the State that larger openings were to be left than the plans and specifications called for, yet the evidence does not show this made any difference in the cost. And, as the materials listed and claimed for in this invoice were all necessary to the final completion of the walls, leaving larger openings than were specified would not necessarily add anything to their cost. It was the duty of claimant to clean out the tunnels before its contract was completed, and there is no evidence showing the cost of cleaning out the tunnels was greater than it would have been had the openings been left the size designated in the specifications. If there was a difference in the cost, there is no evidence from which this court can determine the amount. The claim for invoice No. 2 is refused.

Invoice No. 3, is a claim for levelling basement floor after the water line was laid. The evidence shows that the basement floor was in the same condition when the water line was laid that it was when the claimant finished excavating, except the rubbish that had fallen while the building was going up. The specifications required the contractor to do the work mentioned in this invoice if the architect so directed, which he did. This work being required of claimant under its contract, its claim therefor is refused.

Invoice No. 11 is a claim for $10,483.14 for increased cost of plastering. Under its contract with the State all plastering was to be done by claimant. Claimant's contention is, as we understand it, that in February, 1922, it contracted with one Thomas Hawkins to do this plastering for 37 cents per square yard; that Hawkins was ready to begin the job when the

plumbers' strike stopped all work and nothing more was done till the following October when claimant again contracted with Hawkins to do the plastering as a day labor proposition; that claimant kept an accurate account of the work done under this contract with Hawkins and that the plastering cost 96⅓ cents per square yard under it instead of 37 cents, the price for which Hawkins first agreed to do it. The difference between these two prices is the basis of Invoice No. 11. Article 4 of claimant's contract with the State fixes the prices of labor and material upon which the total contract price is based and provides the State shall have the benefit of any savings effected by claimant in securing labor or materials at less than those prices. There is no evidence showing how claimant paid Hawkins, whether by the hour or by the day. If claimant paid him no more per hour for labor than its contract with the State fixes as the basis of the amount to be paid by the State for the entire work, under no theory would the State be liable for any loss sustained by claimant. We are of the opinion that claimant has failed to make any proof upon which the claim for Invoice No. 11 can be allowed and it is therefore refused.

Invoice No. 12 is for storage and extra cost of mill work due to delay on account of the plumbers' strike. The claimant's contract with the State does not provide for the payment of damages or loss occasioned by strikes, and this claim is refused.

Invoice No. 13 is a claim of $5,735.45 for credits made the State for depreciation of labor which claimant contends did not materialize. Under article 4, of its contract, claimant agreed with the State that the labor should not exceed certain prices per hour and that if it secured the labor for a less amount than the prices named in that article, then the State should take credit for the difference between the prices paid by the claimant for labor and the prices named in article 4. From the time it began work under its contract claimant made monthly reports to the State of the amount paid for each class of labor and the State took credit for the amounts shown due it by these reports. There is no evidence in the record showing claimant's reports were not correct or that the credits were not properly given, and the claim for Invoice No. 13 is refused.

Invoice No. 14 is a claim for patching tile floors and mastic base. The original amount claimed was $792.12, which has

been amended to read $1009.47. These floors were put in contrary to the plans and specifications by the Peoria Stone and Marble Works, and without the written consent of Edgar Martin, supervising architect, as provided in article 22 for change in the work. The claimant having failed to comply with the contract, this claim is refused.

Invoice No. 16 is a claim of $1,520.96 for damages to troweled floor finish due to the presence of dirt and lignite in the sand furnished by the State. Claimant's contract provides for certain cement floors, and specifies that immediately after the foundation or structural floor is poured and leveled off a layer or top dressing at least one-half inch thick shall be deposited and worked down with a wood float and where an application of mastic follows shall be finished to a true level by troweling. Claimant put in the floors with a scratch coat finish and, on being told they were not being put down according to the specifications and there would be trouble later when the mastic was applied, replied that it would take care of any trouble that might arise. We are of the opinion this extra cost was caused by claimant's failure to comply with the specifications, and the claim is refused.

Invoice No. 17 is for shrinkage on mas-oleum, amounting to $1007.40. This material was delivered on the job on the 29th of April, 1922, more than 30 days after the plumbers' strike. Claimant knew the strike was on before this material was shipped and it could have stopped the shipment and avoided the loss. Furthermore, there is nothing in claimant's contract with the State making the State liable to the claimant for any change or loss caused by strikes. The State is not liable for this claim, and it is refused.

Invoice No. 18 is a claim for $909.65 for closing windows for plastering in unseasonable weather and cleaning windows after plasterer. Four hundred and sixteen dollars of this claim is for closing of windows in the building on account of unseasonable weather. If claimant had completed the buildings by March 1st, 1922, the time contemplated and fixed for their completion when it signed the contract with the State, the plastering would have been done during the winter months and it would have had to close the window openings (contract, paragraph 183, page 52) to protect the plastering, as the specifications so provide. We are of the opinion that claimant was not put to any additional expense on account of closing of windows. As to the $375.00 for cleaning windows after the plas-

terers, the specifications provide that the contractor shall maintain the building and premises in a neat cleanly condition. The claimant knew this provision was in the contract at the time it was signed and should have included an allowance for this in its bid on the buildings. This claim is therefore refused.

Invoice No. 19 is for $984.50 shrinkage on 100 tons of plaster. Claimant's evidence shows two cars of plaster were received at the job in March, 1922. The freight bills, which are in evidence, show one of the cars contained 90,000 pounds and the other one 110,000 pounds. The Attorney General admits that $440.00 of this claim is just, but contends the cars only contained 25 tons each, and introduced evidence tending to prove that contention. We are of the opinion that the better evidence shows there were 100 tons of the plaster, and that claimant is entitled to an award on that basis. If claimant is entitled to an award of $440.00 on the assumption there were only 50 tons of plaster in the two cars, then it should be awarded $880.00 as the proof shows the cars contained 100 tons. We therefore allow an award of $880.00 on Invoice No. 19.

Invoice No. 20 is for interest on invested capital, reserve fund and equipment, amounting to $1,575.00. The claimant's contract with the State provides that the State shall hold back 15% of the value of the materials and labor, as estimated by the supervising architect, and that the amount held back shall be paid within 30 days after the contract is finished. At the time of the plumbers' strike the reserve belonging to the claimant was in the neighborhood of $38,712.32. It is admitted that about the 1st of July, 1922, an agreement was reached between the claimant and the architect that the claimant was to write a letter to the department requesting that $20,000.00 be paid on his reserve fund. On July 10, 1922, the letter was written and the payment made. In our opinion, interest on invested capital and equipment is speculative. If the claimant had been working during all the time complained of, it might have made interest on its capital and equipment and it might have lost heavily. From the evidence introduced we are of the opinion that the claimant and the representatives of the State had an understanding that upon payment of the $20,000.00 of the reserve fund no claim would be made for interest. The claim for invoice No. 20 is refused.

Invoice No. 21 is a claim for losses due to inefficiency of labor caused by interference with job organization. We cannot see how we would be justified in allowing claimant an award on this invoice. There is nothing in the claimant's contract or the evidence that would justify an award on this claim. Such losses might occur on any contract where a number of different trades are employed, and these facts are taken into consideration by reliable bidders when bidding on contracts of this kind. The claim is refused.

Invoice No. 22 is the balance due on the contract of June 21, 1921, and the extra contracts, 1, 2, 3, and 4, together with the extras acknowledged by the State amounting to $5,413.60. The evidence shows that since March 28, 1924, the date of this invoice, two payments amounting to $4,668.14 have been made, and a credit for paint to the amount of $336.00 has been given, leaving a balance of $409.46 due on this claim. There is no dispute as to this amount, and we therefore award claimant the sum of $409.46 on invoice No. 22.

Claimant is therefore awarded the total sum of $5,660.72.

(No. 859—Claim denied.)

HELENA DOROTHEA BURGHARDT, ADMINISTRATRIX OF THE ESTATE OF ERNEST A. G. BURGHARDT, ALSO KNOWN AS GUSTAVE BURGHARDT, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1926.

GOVERNMENTAL FUNCTION—*State not liable for injuries sustained by inmate of its institutions.* The State in conducting its State Hospital at Dunning exercises a governmental function and is not liable for injuries sustained by an inmate thereof.

BAMBERGER & NEUMER, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General; for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim filed by Helena Dorothea Burghardt, Administratrix of the estate of Ernest A. G. Burghardt, deceased, for damages for the death of said deceased while an inmate of the Chicago State Hospital at Dunning, Chicago, Illinois.

Ernest A. G. Burghardt was a resident of Cook county, Illinois, and was declared insane by the county court of that

county on the 16th day of August, A. D. 1906, and by the order of said court committed to the Chicago State Hospital for the Insane at Dunning, Chicago, Illinois, and remained there as a patient until his death on December 26, 1923. At the time he was committed to the hospital he was an ornamental iron worker. On the 19th day of June, 1900, he was married to Helena Dorothea Burghardt and lived with her until committed to the hospital. One child, viz., Ernest Adam Gustave Burghardt, Jr., was the issue of this marriage, and he and the widow are the only heirs and next of kin of deceased.

The deceased was in a demented condition for about three months before being committed to the hospital, and he was committed on a petition filed by Gustave Nowak, his brother-in-law. After his commitment to the hospital his mental condition gradually grew worse, though his physical condition remained fairly good up to October, 1917. He suffered from a form of mental disease known as general paralysis of the insane, commonly called paresis, and for more than seven months before his death he was also in poor physical condition. On account of his weakened physical condition he was transferred to the dining room, a one story building, so that he would not have to go out to his meals and would not have far to go out for exercise in the summertime. Just prior to his death he was in a very poor mental and physical condition, getting quite feeble and gradually declining with no hope of ever being any better. He was about 58 or 59 years old at the time of his death.

On December 26, 1923, about 5:30 in the evening, while the deceased and other inmates of the hospital were eating supper in the dining room, a fire broke out in the closet in the building called Annex 5 of the hospital. At the time the wind was very high from the west, and the fire destroyed Annexes 5, 4, 3, 2, and the dining room in which deceased and a number of other inmates lost their lives. The origin of the fire was undetermined. The employees and attendants at the hospital did all that was humanly possible for them to do to save the inmates.

The dining room in which deceased lost his life was a one story building equipped with one door opening to the yard and a double door opening into a hall which in turn opened into the yard. This dining room was built mostly of glass, consisting of windows and doors, on the order of a greenhouse, and was originally built for tubercular patients, but

owing to the crowded condition of the hospital was being used at the time of the fire as a dining room.

There is no evidence that this building was constructed contrary to any ordinance of the city or statute of this State, and at the time of the fire it was in as good condition as when originally built.

The evidence in this case shows deceased was incurably insane and that because of his mental condition he would never have been able to contribute any support to his wife, but on the contrary he would have been a burden and a charge to her had he been released from the hospital.

The State has filed a general and special demurrer to the declaration, setting up that the doctrine of respondeat superior is not applicable to the State; that in the absence of statute the State is not liable for the torts of its officers, agents or employees; that the State in conducting the Chicago State Hospital at Chicago, Illinois, exercises a governmental function and is not liable for injuries to those in attendance upon said institution or to those in its employ.

In our view of this case, it is not necessary to discuss the evidence in detail. This court has repeatedly held that the rule of respondeat superior is not applicable to the State. (*Ryan* v. *State*, 4 Ill. C. C. 57; *Schroeder* v. *State*, 3 Ill. C. C. 36.) This court has also held that the State in conducting its charitable institutions is exercising a governmental function and is not liable for damages to the inmates. (*Schwab* v. *State*, 4 Ill. C. C. 77; *Van Meter* v. *State*, 4 Ill. C. C. 325).

We are therefore of the opinion that the State is not liable in this case and that the demurrer to the declaration should be sustained. The claim is therefore rejected.

(No. 882—Claimant awarded $2,796.00.)

CLARA HASSON, ADMINISTRATRIX OF THE ESTATE OF ALBERT HASSON, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1926.

RESPONDEAT SUPERIOR—*when State not liable.* The State is not liable for injuries sustained by its employees while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* Although no legal liability exists against the State an award may be made to widow of deceased, who was killed while in the performance of his duty as an employee of the State, and an award fixed on the basis provided by the Workmen's Compensation act.

MILES K. YOUNG, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that Albert Hasson was employed as patrolman of the State Highway Police of the Divisions of Highways of this State at a salary of $150.00 per month, and that while he was so employed on to-wit, the 7th day of September, 1924, upon and along the State highway near Lexington, Illinois, he was killed. There is no dispute as to the facts that he was employed by the State at the time of his death. There is some controversy as to the facts of the accident occurring outside of his territory, or whether or not he was sent to the place by his superiors.

There is no question that as a matter of law, no recovery could be had upon this claim, and therefore the consideration of this claim must be directed upon the proposition of equity and good conscience.

The court is of the opinion from all the evidence offered that this man was killed in the performance of his duty in regular employment of the State of Illinois, and as it has been heretofore announced by this court, in numerous cases, the employees of the State of Illinois should, as a matter of good conscience, have the same protection as employees of corporations or individuals who would under similar circumstances be granted an award under the Workmen's Compensation Act.

Therefore it is considered by the court that an award should accordingly be made in this case which would go for

the benefit of the widow of the deceased through due course of the administration of the estate of the decedent, there being no children and that element is considered in filing an award.

Therefore, an award is hereby made to claimant in the sum of $2,796.00.

(No. 1065—Claim denied.)

MICHAEL JORDAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1926.

STATUTE OF LIMITATIONS—*when claim barred by.* All claims against the State not filed within five years from the time of their accrual are barred by the statute of limitations, except as to persons under disability. (Par. 10, Sec. I, Court of Claims Act 1917.)

SCOTT, BANCROFT, MARTIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant was a practicing attorney in the city of Boston, Massachusetts, on or about the thirtieth day of September, 1915, and it is alleged by claimant that Hon. Patrick J. Lucey, then Attorney General of the State of Illinois, entered into an arrangement with the claimant to perform certain legal services in connection with a certain suit by the People of the State of Illinois against one Samuel B. Raymond, formerly county treasurer of Cook county, Illinois, for recovery of inheritance taxes collected by him as such treasurer; that claimant received a payment of $500.00 as retainer and that the sum of money involved was a considerable amount.

There is no controversy at this time on the question of the amount of services or value of such services. The only question before the court for consideration, is raised by the defendant, the State of Illinois, in its plea of the Statute of Limitations.

After consideration of the pleas and exhibits filed, and argument of counsel, it appears to the court that more than five years had elapsed before the filing of the claim in this court and that there appears to be no new promise or any other element that would take the matter out of the Statute

of Limitations and also in view of Paragraph 10 of Section 1 of the Court of Claims Act, which reads as follows: "Every claim against the State, cognizable by the Court of Claims, shall be forever barred unless the claim is filed with the Secretary of the court within five years after the claim first accrues, saving to infants, idiots, lunatics, insane persons and persons under disability at the time the claim accrued, two years from the time the disability is removed," it is considered by the court that said action cannot be maintained in this court.

It is therefore considered by the court that the plea of the Statute of Limitations be sustained and for that reason the case is dismissed.

(No. 747—Claim denied.)

ALFRED W. MAYFIELD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1926.

Rehearing denied November 9, 1926.

QUARANTINE—*right of State to destroy animals infected with contagious disease.* The State has the right and power to order the destruction of animals infected with contagious disease, if public interest is best served thereby.

SAME—*when State not liable.* Where animals are quarantined or killed for the purpose of eradicating a dangerous or infectious disease, the State is not liable to compensate the owner for the loss suffered thereby, in the absence of a statute providing therefor. (*Durand v. Dyson*, 271 Ill. 382.)

SAME—*construction of Sec. 6, of Act of Gen. Assembly 1919, page 211. Tuberculosis among domestic animals.* By Section 6, of the Act of 1919, page 211, it was intended by the Legislature that compensation should only be paid for cattle destroyed by the joint action of the Federal and State departments, and only then when claimant complies with all the provisions of the quarantine regulations.

SAME—*State not liable for loss in sale of diseased animals.* The Act of 1919, makes no provision for the payment of losses incurred in the sale of diseased animals.

JESSE PEEBLES & W. EDGAR SAMPSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court.

This case is brought to recover the loss claimant sustained on the sale of 27 head of tubercular cattle. Claimant's state-

ment was filed November 16, 1923, and alleges in substance: that in the year 1922 he had a herd of 27 head of milk cattle; that it was brought to the attention of the Board of Live Stock Commissioners these cattle were the victims of a communicable disease and after an investigation of the cattle claimant's farm was strictly quarantined as provided by statute; that after said quarantine he was given permission, on March 30, 1922, by F. A. Laird, chief veterinarian of the State, to ship the cattle and sell them, and pursuant to such permission, on or about April 22, 1922, he shipped them to the Producers Live Stock Commission Association at the National Stock Yards; that the cattle were sold and the net proceeds of the sale, amounting to only $253.49, were remitted to him and represent all he received from the sale of the cattle; that before shipping the cattle for sale he caused the value of them to be appraised by competent and disinterested persons who valued 18 head of milk cows at $124.00 each and 9 head of heifers at $80 each; that the difference between the appraised value of the cattle and the price received from the sale of them is the basis of his claim; that because of such quarantine and direction by the State veterinarian he sold said 27 head of cattle; and that the value of the same over the sum of $253.49 was wholly lost to him. The Attorney General has filed a general demurrer to claimant's statement.

Evidence was taken on behalf of claimant and the State. It shows that a number of the farmers around Carlinville in the summer of 1921 decided to have their dairy herds tested for tuberculosis, and on September 3d claimant signed an agreement to have a test of his herd made. A test was made by Dr. Decker and 16 of his animals were found to be tubercular. On September 9th, these 16 cattle were quarantined and notice of quarantine delivered to claimant. The notice of quarantine contained the following provisions: "It shall be your duty to keep the quarantined animals confined in such manner that other cattle utilized for dairy or breeding purposes cannot come in contact with the same; at the time of disposing of said quarantined animals, notice of shipment or sale must be forwarded to the chief veterinarian on the day of shipment or sale. Blank form of said notice is hereto attached, and must be subscribed and sworn to before a notary public."

The agreement signed by claimant to have his herd tested contained the following clause: "I will allow no cattle to be

associated with my herd which have not passed a tuberculin test approved by the Bureau of State officials. I will keep all new cattle separated from my herd pending the application of a tuberculin test by an inspector of the said Bureau or State. I will notify the proper officials immediately, giving details of the identification, characteristics, and records of tuberculin tests of any cattle which may be added to my herd."

The test of claimant's herd was made and his cattle quarantined under the provisions of the act entitled "An act to revise the law in relation to the suppression and prevention of the spread of contagious and infectious diseases among domestic animals," approved June 14, 1909. Section 2 of this act makes it the duty of the Board of Live Stock Commissioners, the State Veterinarian, or any assistant State Veterinarian, to cause any animals infected with a dangerously contagious or infectious malady to be strictly quarantined.

It is now generally recognized that tuberculosis is a dangerous and contagious malady, and that human beings may contract it by the use of milk from tubercular cows, and under the provisions of the act of 1909 it was the duty of the State officials to quarantine claimant's herd. Cattle infected with such a disease become a public nuisance and the State has power to quarantine them and, if deemed necessary for the public good, to order their destruction. (*Durand* v. *Dyson*, 271 Ill. 382; *Thompson* v. *State*, 4 C. C. 26.) Some time after these cattle were quarantined complaint was made to Dr. Laird, Chief Veterinarian of the State, in regard to the manner in which claimant was caring for his herd, and Dr. Jackson R. Brown, an Assistant State Veterinarian, was sent to investigate. Dr. Brown made his investigation on December 22, 1921. Claimant had not kept his infected cattle separate from those not infected as the provisions of the quarantine required he should do, but allowed them to mingle together in his barn lot. Dr. Brown informed him this was a violation of the conditions of the quarantine and instructed claimant that he should keep the infected cattle isolated from the healthy ones. Claimant said he was unable to handle them any differently, and continued to allow them to mingle in his lot until the infected ones were disposed of. After this investigation was made by Dr. Brown, Dr. J. J. Littner, Inspector in charge of tuberculosis eradication work in the State of Illinois, notified claimant that as he had violated the

provisions of his cooperative agreement cooperation had been withdrawn by the State and Federal departments and they no longer assumed responsibility for tuberculosis eradication in connection with his herd. After this claimant decided he wanted to get rid of his diseased cattle in order to clean up his herd and on March 28, 1922, wrote to Dr. Laird relative to shipping the infected cattle to market. On March 30th, Dr. Laird replied, enclosing a permit to ship the cattle, and in his reply told claimant he had lost his indemnity on the animals. On April 13, 1922, the day before the shipment was made, claimant had his entire herd tested. This test was made by Dr. Hammond and showed 27 cows and heifers infected with tuberculosis. On the advice of Mr. Rusk, the Farm Advisor of Macoupin County, these infected cattle were shipped by claimant to the Producers Live Stock Commission Association for sale on April 14, 1922, and were sold by them for the account of claimant for the net sum of $253.49. The day before the cattle were shipped claimant states he had them appraised by John Campbell, Charley Moore, B. F. Burke and Harry C. Foltz. This appraisement was not made at the request nor under the direction of either the State or Federal Departments of Agriculture. It has not been introduced in evidence and the record does not disclose how it was made. Mr. Burke and Mr. Foltz were called as witnesses by claimant and testified the 18 cows were worth $125.00 per head and the heifers $50.00 per head. Claimant also called F. D. Gore to prove the value of the cattle and he testified the cows were worth $125.00 per head and the heifers $50.00 to $60.00 per head. Claimant asks to be awarded the difference between these proven values of the cattle and the net sum received by him from their sale.

Under its police powers the State has the right to place cattle infected with tuberculosis under quarantine, and to destroy them if deemed necessary to the public welfare, without compensation to the owner. *Durand* v. *Dyson, supra.* Where animals are quarantined or killed for the purpose of eradicating a dangerous and infectious disease the State is not liable to compensate the owner for the loss suffered thereby unless the statute provides for the payment of such loss by the State. And if the statute provides for payment of compensation to the owner, in order to recover it the owner must comply with the provisions of the statute relating thereto.

It is the contention of claimant that he is entitled to compensation under the provisions of the act entitled "An act in relation to the suppression, eradication and control of tuberculosis among domestic cattle and to provide an appropriation therefor", approved June 28, 1919. Laws of 1919, p. 211. Section 4 of this act provides that the Department of Agriculture, with the consent of the owner, may destroy cattle affected with tuberculosis if the public interests would best be served by their destruction. Section 5 of the act provides that "subject to the provisions hereinafter set forth, the owner of any cattle destroyed under the provisions of this act shall be reimbursed for the loss thus sustained." Section 6 is as follows: "If any cattle tested for tuberculosis under the provisions of this act shall react to the test, and the owner shall consent to the destruction thereof, such cattle shall be appraised by a board of appraisers, consisting of a representative of the United States Department of Agriculture and a representative of the Department of Agriculture of the State of Illinois. In case of a failure to agree on the valuation, or if the owner refuses to accept the appraised value, the two appraisers, together with the owner, shall select a third appraiser agreeable to all. The owner shall be bound by the appraisal. The State of Illinois shall pay to the owner of cattle destroyed under the provisions of this act one-third of the difference between the appraised value of such cattle and the proceeds from the sale of the salvage, which the owner shall receive, provided that in no case shall any payment hereunder exceed $25.00 for any grade animal or $50.00 for any pure-bred animal, and no payment shall be made unless the owner has complied with all lawful quarantine regulations." It is clear from the provisions of this section that the Legislature intended that compensation should be paid only for cattle destroyed by the joint action of officials of the Federal and State Departments of Agriculture, and that the amount of such compensation should be fixed by representatives of these two departments if they could agree with the owner, and if they could not so agree, by such representatives and a third person agreeable to them and the owner, and that in no event should compensation be paid to any owner who had not complied with all lawful quarantine regulations. Claimant did not comply with the quarantine regulations. These regulations required him "to keep the quarantined animals confined in such manner that other cattle

used for dairy or breeding purposes cannot come in contact with the same." This requirement was plainly stated in the notice of quarantine sent by the chief veterinarian to claimant. It was a reasonable and lawful regulation and one with which claimant should have complied. He did not do so and his explanation for not doing it is that he could not handle his cattle differently. Inconvenience is no excuse for his not complying with the quarantine regulations.

This statute expressly provides that "no payment shall be made unless the owner has complied with all lawful quarantine regulations." This provision makes compliance with the quarantine regulations a condition precedent to the right of an owner to receive compensation. Claimant is charged with knowledge of the law. But aside from that he was notified by both the Federal and State officials that his failure to comply with the quarantine regulations would lose him any right to compensation. In December, 1921, Dr. Brown first called his attention to the regulations when he discovered the infected and healthy cattle were not being kept separate, and told him his failure to comply with them would lose him his right to indemnity. Claimant did not then isolate the infected cattle but continued to turn the infected and healthy animals out together in the barn lot until the infected ones were disposed of.

The Department of Agriculture did not order these cattle destroyed. It only placed them under quarantine and, at the request of claimant, permitted them to be shipped out for sale. It appears from all the provisions of this act that the Legislature intended to compensate owners only for cattle destroyed by order of the department. The act makes no provision for the payment of losses on the sale of diseased cattle. But even if the act could be construed to include such losses, claimant is barred from recovery by his failure and refusal to comply with the quarantine regulations.

The demurrer is sustained, the claim disallowed and cause dismissed.

(No. 805—Claimant awarded $477.47.)

PEERLESS COAL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1926.

WAR TAX—*refund may be made.* This case is controlled by the decision of the court in *Clark Coal & Coke Co. v. State, supra.*

GRAHAM & GRAHAM, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The facts disclosed in this claim are similar to the case of Clark, Coal and Coke Company, No. 821, in which it appeared that no claim was made for war tax on shipments of coal to Institutions under the control of defendants. Representatives of defendant were advised that no war tax would be required on freight charges on the shipments of coal made to State Institutions. However after the transaction was closed, the federal authorities collected this tax from claimant and for reasons set forth in the Clark case it is the opinion of this court that claimant is entitled to recover the amount of the tax.

Therefore it is ordered by the court that claimant be allowed the sum of $477.47.

(No. 806—Claim denied.)

M. A. DUNNING, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1926.

RESPONDEAT SUPERIOR—*State not liable.* The State is not liable for the negligence of its employees.

INDEPENDENT CONTRACTOR—*State not liable for acts of.* The State is not liable for the torts or negligence of an independent contractor engaged in the construction of a part of its hard road system.

SHAW & HUFFMAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for injuries received by claimant in an automobile accident on Section 14 of State Highway Number 1 in

Lawrence county. The accident occurred December 3, 1923. The section of the highway where it occurred was then under construction but the pavement had not yet been put down and the road had not been accepted and taken over by the State for maintenance.

Claimant is an oil driller and had been working at a well about five miles south of Lawrenceville on the day of the accident. Between five and six o'clock in the evening he started to Lawrenceville in his car. It was raining and dark, and water was over the road. There was a hole, or small washed out place, in the road-bed near a concrete culvert over which claimant had to pass and the wheels of his car dropped into this hole and the car was overturned into a pool of water by the roadside. Claimant was caught under the steering wheel and held there under the water until he was rescued by some parties who happened to be near. When taken out of the water claimant was unconscious, and but for timely assistance would have drowned.

As a result of his exposure claimant alleges he contracted bronchitis and was unable to work for twenty-eight weeks; that his wages were $9 per day and that he should be paid at that rate for the time he lost from work, amounting to $1,512.00. He also alleges it cost him $75 to have his car repaired and that he paid his physicians $21, for which amounts he also asks to be reimbursed.

Section 12 of the Bond Issue act provides that the public highways upon which such roads are being constructed shall, during the construction period and continuously thereafter, be under the jurisdiction and control of the Department of Public Works and Buildings, but the duty of maintaining such highways shall rest on the local authorities until such construction work has been completed. Section 14 of State Highway Number 1 was under construction at the time these injuries were received and had not been accepted by the Department of Public Works and Buildings but was still under the jurisdiction of the local road authorities.

The facts in this case are not disputed, but the Attorney General has filed a demurrer to the declaration and contends the State is not liable for the injuries received.

The road in question was not being constructed by the agents of the State but by an independent contractor. But even if the contractor could be held to be an agent of the State, that would not make the State liable, for it is well set-

tled that the principle of *respondeat superior* does not apply to the State.

The Supreme Court of this State has held in a long line of decisions that towns and counties are not liable for damages caused by the negligence of the agents and officials of such municipalities in constructing and maintaining roads. The reason is that such municipalities are sub-divisions of the State for governmental purposes. Upon the same principle the State, being the whole body of people organized for governmental purposes, is not liable for such damages.

We are, therefore, of the opinion that the State is not liable in this case, and the demurrer will be sustained, the claim disallowed and the case dismissed.

(No. 821—Claimant awarded $318.56.)

CLARK COAL & COKE CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1926.

WAR TAX—*when State liable to refund.* Where coal is furnished, to a Department of the State, under a contract and the bid accepted did not include the Federal War Tax, and it was represented by the proper State authorities at the time the bid was accepted that there would be no war tax, and afterwards claimant was required by the Federal authorities to pay the tax: *Held.* The State is liable to reimburse claimant for the tax paid.

STEVENS & HERNDON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The facts disclosed in this claim and by the testimony offered, are that the State of Illinois purchased coal from claimant for certain of the State Institutions; that the bids for said coal were made at a lump sum price consisting of two amounts, one the purchase price of the coal, and the other the freight rate from the mine from which the coal was to be furnished to the institution to which it was shipped. The freight rate set out in said bids and order did not include a war tax. It appeared that the defendant from the local Federal Internal Revenue office received advice that war tax was not due the Federal Government on shipments of coal purchased by the

State and the Federal Government afterwards insisted on the payment of such tax which amounted to $318.56, which amount was paid by the claimant. It further appears from the evidence and statements that the defendant through its Division of Purchases and Supplies represented that there would be suffering in State institutions unless they were furnished coal at that time, and it further appears from the evidence that the coal supply of claimant was contracted for through other channels. However it appears from the evidence that claimant not withstanding the demands from other sources furnished the coal for our State Institutions at a price below the market price. In fact it appears that the freight was advanced by claimant in good faith and it was understood by defendant in like manner that there would be no war tax. Therefore, it would appear to this court that in face of the facts disclosed that as a matter of equity and good conscience, if not as a matter of law, that the State should reimburse the defendant, for the amount of this tax. If it were known at the time of the transaction, the tax would have been added and paid by the defendant as a matter of course.

Therefore, it is ordered by the Court that the claimant be allowed the sum of $318.56.

(No. 824—Claimant awarded $159.27.)

CHICAGO-SPRINGFIELD COAL CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1926.

WAR TAX—*when refund may be made.* This case is controlled by the decision of the court in *Clark Coal & Coke Co. v. State, supra.*

STEVENS & HERNDON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The facts disclosed in this claim are similar to the case of Clark, Coal and Coke Company, No. 821-41, in which it appeared that no claim was made for war tax on shipments of coal to institutions under the control of defendants. Representatives of defendant were advised that no war tax would

be required on freight charges on the shipments of coal made to State institutions. However after the transaction was closed, the federal authorities collected this tax from claimant and for reasons set forth in the Clark case it is the opinion of this court that claimant is entitled to recover the amount of the tax.

Therefore it is ordered by the court that claimant be allowed the sum of $159.27.

(No. 703—Claim denied.)

LOUIS W. FEIL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1925.

Rehearing denied January 19, 1927.

RESPONDEAT SUPERIOR—*State not liable for negligence of its employees.* The State is not liable for the negligence or torts of its employees.

JOEL C. CARLSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a case for the recovery of injuries sustained by claimant, who sets forth in his declaration that on to-wit: January 23, 1923, he was driving his Oldsmobile touring car on the Lincoln Highway, a state road, his destination being Frankfort, Illinois, and when about eight miles west of Chicago Heights, Illinois, on said Lincoln Highway, the claimant collided with a truck belonging to the State of Illinois used by and under the control of, the Division of Highways of the Department of Public Works and Buildings; that said truck was standing on the right hand side of said Lincoln Highway, but in the roadway; that the person in charge of said truck was in the act of burning some refuse by the side of the highway; that the smoke from said fire obscured from the view of the claimant the said truck and that by reason of said negligence of the operator of said truck in leaving said truck on the highway and also by reason of the negligence of said operator of said truck in making said fire and causing said smoke to obscure the truck from view of the claimant, the claimant collided with the truck and almost entirely demolished his Oldsmobile, and injured claimant.

The Attorney General, on behalf of the State of Illinois, has filed a demurrer, which demurrer, as a matter of law, is sustained.

The court has carefully reviewed all the evidence presented in this case, and we find that there is no liability on the part of the State of Illinois; that claimant is guilty of contributory negligence, and that his contributory negligence, in driving through the smoke, at the rate of seventeen or eighteen miles an hour, and keeping on for about 140 or 150 feet through said smoke until he collided with the truck, was the cause of the accident. There is a conflict in the testimony relative to facts existing at the point of the accident, claimant stating that his view was totally obscured by the smoke, while Rushing testified that he could clearly see the truck twenty or thirty feet away, Rushing being the maintenance foreman and patrolman, employed by the State Division of Highways, and in charge of the Section of the road where the accident occurred.

For the reasons set forth, the demurrer is sustained, and the case dismissed.

Opinion on Rehearing filed January 19, 1927.

The claimant in the above entitled cause has asked for a rehearing of his case. While we have a deep sympathy for this elderly gentleman who was injured while driving on the State highway, we must be guided by the law, and the facts, as we see them. As heretofore stated we believe that this claimant was guilty of contributory negligence, in driving his car through a dense smoke, at the rate of 17 or 18 miles an hour, and keeping on for about 140 to 150 feet through said smoke until he collided with a truck, under the control of the Division of Highways of the Department of Public Works and Buildings. The testimony shows that the operator of the truck saw claimant, although he was 20 or 30 feet away from him, immediately upon the happening of the accident; that another car had passed the truck shortly before the accident occurred, without any trouble.

The decision heretofore rendered is affirmed.

(No. 724—Claim denied.)

J. S. NEIGHBORS, ADMINISTRATOR OF THE ESTATE OF ELSIE MARIE NEIGHBORS, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1926.

Rehearing denied January 19, 1927.

GOVERNMENTAL FUNCTION—*when State not liable.* The State in conducting its State Hospital at Peoria, exercises a governmental function, and is not liable for injuries sustained by its employees therein. (*Hartley* v. *State*, *supra*, 4 C. C. Rep. 268, followed.)

K. C. RONALDS, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought by the administrator of the estate of Elsie Marie Neighbors, deceased, to recover the sum of $10,000.00. It appears from stipulation and other allegations in the case that Elsie Marie Neighbors became an employe of the State of Illinois as an attendant at the Peoria State Hospital in 1917 and afterwards as a nurse; that she became ill in March, 1921; that in August of the same year she was taken to Colorado and that she returned to her home in Galatia, Illinois on April 5, 1922 and that she departed this life on Sept. 9, 1922.

It is contended by claimant that at the time the said Elsie Neighbors entered such employment she was in good health; that at the time she became ill in 1921, she was working in a tubercular ward and had been for several weeks prior thereto. It is contended by the defendant and supported by testimony of several witnesses who were nurses at said hospital, and were acquainted with Miss Neighbors, that she was a frail girl; that these nurses *did practically* the same kind of work and were on duty in active tubercular work. It is also contended by the defendant that Miss Neighbors was the type of person physically who would be liable to contract this disease.

This court is impressed with the strong argument made by counsel for claimant in that this case is one that should appeal to the sympathy of all persons, and it is a case that

warrants the most earnest consideration. We realize the sorrow and heartache of the parents and friends of this girl, but it is the duty of this court to keep within bounds the liability of the State of Illinois as was contemplated by the Legislature in passing the Court of Claims act.

It is conceded that there is no legal liability, and this case cannot be considered as viewed by this court under the rules prescribed in the act commonly called "The Workman's Compensation Act." Therefore the only question left to consider is whether or not this is an obligation that the State should in equity and good conscience pay. It is the opinion of this court that from all the evidence in this case there is a doubt as to whether or not this girl would not have contracted this disease sooner or later in other employment. It appears from the evidence that many other attendants and nurses performed the same duties and were exposed to the same dangers of this disease as Miss Neighbors and there is nothing in the evidence to indicate negligence on the part of the management of this hospital in so far as safeguarding the nurses, attendants and patients in so far as practical against disease. It must be conceded also that the training necessary for Miss Neighbors to prepare for work as a nurse would give her sufficient knowledge to understand the hazards and dangers of this occupation and the ability to protect herself in so far as possible, and it would seem that when she entered this employment she well knew the health dangers and hazards of this occupation and consequently assumed the risk, if there was risk in that occupation of such a nature as to hazard the health of persons who were not disposed to contract tuberculosis.

The claimant cites the case of *Hartley* v. *State of Illinois*, Vol. 4, page 268, Court of Claims reports, in which case the claimant was employed and at work in a place that was especially attractive to lightning by reason of the existence of a high tension electric transmission wire, and the buildings adjacent thereto or the wall of the penitentiary was re-inforced with steel and iron, etc. It appears to this court now as it did on passing on the Hartley case that the claimant was exposed to special hazards in doing the particular work he was employed in at the time of his injury; that in the case cited by the claimant, *Turner* v. *The State of Illinois*, Vol. 4, page 275 of the Court of Claims reports, the claimant was ordered to take care of the patient who was violent and suffering with smallpox; that claimant was obliged to come in

close contact, placing his arms around the patient's shoulders and neck, holding him upright while he was taking the patient's temperature; that the attending physician told claimant that there was no danger in his doing so, that claimant was about seven and a half hours in constant attendance upon said patient.

It does not appear to the court that either of these cases could be urged as a precedent to the one now considered by the court. In both cases cited, extra and unusual hazards were manifest, and there could be no reasonable controversy as to the cause of the injuries complained of.

Therefore it is the opinion of this court that to make an allowance in this line of cases would mean an obligation upon the State equal to that of health insurance and we do not consider that the Legislature intended that this court would extend the obligation of the People of the State of Illinois to that limit. It is true that as a matter of equity and good conscience this court takes jurisdiction on cases of unusual hazards and dangers where no doubt could be raised as to the hazards or the causes and where injuries were sustained in course of employment. We are of the opinion however that this claim cannot be allowed by reason of precedent in this court or through the intention of the Legislature when this court was established, and therefore this claim is disallowed.

(No. 751—Claim denied.)

ISABEL WILLIAMS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

GOVERNMENTAL FUNCTION—*State not liable.* The State in constructing its system of hard roads exercises a governmental function and is not liable for injuries or losses caused by the negligence of its employees or agents engaged in its construction.

J. C. BOWMAN AND B. J. O'NEIL, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim made by Isabel Williams (now Isabel Williams Russell) for damages sustained to her wardrobe, five suit cases, and damages to her car, in an accident which oc-

curred on July 28, 1923, when she was driving a Star touring car, on the State Highway four miles south of Carrollton, Illinois, when her car in some manner went down an embankment into a "borrow pit", as it is termed in the diagram submitted by G. E. Corr, and being one of defendant's exhibits. Claimant alleges that said road at that time was being constructed by the State Highway Commission of Illinois; that there were no barriers placed thereon, nor any signs indicating that the roadway or any fills adjacent thereto were dangerous; that while driving on said road with due regard for her own safety, embankment gave way, hurling her with her automobile and personal effects a distance of thirty-five feet into a ravine filled with water to a depth of ten to twelve feet; that loss to her car is $300.00; that her five suit cases filled with clothes sustained a loss amounting to $3,664.75.

From the evidence we find that all the customary and proper signs were placed along the highway so as to inform claimant of the character of the road over which she was traveling; that the road was 16 feet in width at the point where the accident occurred; that she was not passing any car at the time her car left the road and she went down the embankment. We do not believe that this claim is founded on equity and good conscience for the further reason that the claims made in her bill of particulars for wearing apparel, which had been used, are ridiculous. In her testimony, she admits that she had worn the hosiery, hats, blouses, pajamas, and other articles of wearing apparel mentioned, and she places values such as $400.00 for last season's hats, $70.00 for hosiery, waist $45.00, gloves $50.00, all of which we believe are unreasonable and exaggerated. The claimant herself is the only witness produced who testified that the grade gave way, and her testimony is rebutted not only by the State's witnesses, but her own witnesses.

For the reasons above set forth, the demurrer filed by the Attorney General is sustained, and the case is dismissed.

(No. 803—Claimant awarded $1,200.00.)

PAULA ENGLEMAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

NON-LIABILITY OF STATE—*State not liable for injuries sustained by attendant at football game at State University.* The State is not liable for injuries sustained by an attendant at a football game at its State University, which injury was caused by the collapse of a defectively constructed bleacher.

EQUITY AND GOOD CONSCIENCE—*award may be made.* While there may be no liability against the State, yet compensation may be awarded as a matter of good conscience.

FRANK F. TROBAUGH, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This claim was filed by Mrs. Paula B. Engleman, for damages sustained by her, through a fall when the bleacher upon which she was sitting collapsed and she was thrown to the ground, while she was in attendance at a football game, on November 28, 1923, at the Southern Illinois State Normal University, she having paid admission to the game which was staged at said University athletic grounds.

To the declaration filed by the claimant, the Attorney General has filed a demurrer which is sustained as a matter of law.

There is evidence of negligence in the construction of these bleachers, and that quite a severe injury resulted to the claimant as a result of her fall.

The claimant offered testimony showing expenses necessarily incurred by her as result of said injuries, amounting to approximately $1,200.00.

While there is no legal liability on the part of the State to make any compensation on account of any injuries received, as a matter of good conscience, we award to claimant Paula B. Engleman, the sum of $1,200.00.

(No. 831—Claimant awarded $379.00.)

PEORIA & PEKIN UNION RAILWAY COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

DEMURRAGE—*when State liable.* Where the State through its authorized agent had notice of the delivery of cars of coal shipped to the State's institution, it is liable for demurrage charges for failure to unload the cars.

BARNES, MAGOON & HORTON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The claimant, the Peoria and Pekin Union Railway Company, have filed a claim in the sum of $379.00 on account of demurrage on cars of coal shipped to the State Hospital at Bartonville, Illinois. The case hinges on the fact as to whether or not defendant had received notice as to the constructive placement of these cars, under the following provision:

"When delivery of a car consigned or ordered to an industrial interchange track, or to other than a public delivery track cannot be made on account of the inability of the consignee receiving it or because of any other condition attributable to the consignee, such car will be held at destination or, if it cannot reasonably be accommodated there, at the nearest available holding point, and written notice that the car is held and that this railroad is unable to deliver, will be sent or given to the consignee. This will be considered constructive placement." (Item No. 7, Rule 5, Sec. A. of Rules and Regulations contained in Freight Tariff No. 4D.)

There is a direct conflict in the testimony of J. R. Conway, an employee at the Peoria State Hospital, and three witnesses introduced by claimant. We believe that the preponderance of the evidence proves that notices were given as provided for under said rules and regulations, above cited, and that claimant is entitled to be awarded the amount of its claim.

We therefore award to claimant, the Peoria & Pekin Union Railway Company, the sum of $379.00.

(No. 846—Claim denied.)

MARY E. JANECZKO, ADMINISTRATRIX OF THE ESTATE OF MICHAEL W. JANECZKO, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

RESPONDEAT SUPERIOR—*when State not liable.* The State is not liable for the negligence of its employees, agents or officers.

MORTON J. STEVENSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; GEORGE C. DIXON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover on account of an accident occurring to Michael W. Janeczko which occurred on October 14, 1923, and resulted in the death of the said Michael W. Janeczko. It appears that deceased on said date was driving along a paved road known as the Higgins road near Chicago in Cook county, Illinois, and his car slipped or slid overturning and crushing to death the deceased.

It appears further by allegations that this particular stretch of road over which the accident occurred, or the cement part of it, had been completed and traffic permitted to go on it. However the shoulders of the road appeared not to be finished and at the point where the accident occurred, it is claimed there were ditches. There is some controversy however as to the depth or extent of the ditches. It appears further that workmen had been drawing dirt across the cement roadway at this point and had cleaned the dirt from the cement however as far as the same could be taken off by the scraper and that there was some of the dirt remaining on the cement roadway when a rain occurred preceding the accident causing, it is alleged, a particularly slippery place at the point of the accident, the completed cement being eighteen feet wide at the point of accident.

This court considers that it is well settled by the courts of this State and it has been announced repeatedly by this court "that the doctrine of *respondeat superior* does not apply to the State, counties, townships, etc." and that the State is not liable for the misfeasance, wrongs or negligence of its officers, agents or servants. Therefore this case cannot be

considered from the viewpoint of any legal liability on the part of the State. This rule must control in this case. Therefore if there should be any question considered here as to an allowance to the claimant, it should be considered from the viewpoint of equity and good conscience.

From all the evidence in this case we find first, that before deceased came to the point where the accident occurred he was confronted with signs reading "Danger, Slow, Men Working", and although it was Sunday and there were no workmen in sight, these signs were sufficient to cause an ordinarily prudent person to proceed very cautiously and it is further assumed by the court that a person driving a car and exercising the ordinary care and caution for his safety, would observe this particular wet or muddy place on the highway, and if it appeared to him to be dangerous to pass, taking into consideration the ditches on the shoulders of the road, he could stop, turn around or back out. This thought is suggested whether or not the car was being driven slowly and carefully. One of the witnesses testified that from the marks on the pavement after the accident that the tires had slipped along the pavement 150 feet or thereabouts before the car went off the side of the pavement into the ditch. This would indicate that the car must have been driven at a considerable rate of speed. It would appear to the court from the evidence last mentioned and from a reasonable deduction of all the circumstances and reasoning that can be considered in this case in addition to the fact of the signs giving danger warning that there is considerable quality of assumed risk manifest in this case.

It is further considered by the court that from all the facts and circumstances that this case cannot be considered under the rule of equity and good conscience. Therefore, it is recommended by this court that this claim be disallowed.

(No. 849—Claimant awarded $980.66.)

CITY OF SPRINGFIELD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 10, 1927.

SPECIAL ASSESSMENTS—*when State liable.* Where a municipal corporation under a special assessment ordinance makes an improvement and by reason of such local improvement the property of the State is benefited, and the Legislature makes an appropriation to pay the principal of the assessment on the property of the State, the State is liable to pay the interest on the assessment in like manner as individuals or other property owners.

EDMUND BURKE AND W. EDGAR SAMPSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This claim was brought to recover interest accruing through the paving of Adams and Monroe streets by the city of Springfield in the year 1922. Monroe street is immediately north of the State Capitol building and fronting thereon are the Capitol grounds, the Arsenal and the State Electric Light plant. Adams street is one block north.

The cost of each of the improvements was provided for by special assessment. The ordinance for the improvements provided also that the assessments might be paid in yearly installments, the deferred payments to bear interest.

The 53d General Assembly made an appropriation to pay these assessments and it appeared that this money was offered to claimant on July 5, 1923, but claimant refused to accept such payments until on or about July 23, 1924, insisting that interest should be paid also.

It appears from the evidence in this case that State property was benefited by these improvements, the same as individual property owners involved in this improvement. The Legislature made an appropriation for the payment of the principal of these assessments. Therefore, it would appear to the court as a matter of equity and good conscience, the State should respond in like manner as the law provides in the case of an individual, citizen and property owner and consequently should pay interest on these assessments in like manner. However, it is the opinion of this court that such interest should only be paid up to the time the State offered to pay the principal which date appears to be July 5, 1923.

The claimant did not accept the money for nearly a year after the State first made the offer of payment. We are of the opinion that interest should not be charged after the offer of payment was made. It appears that the amount of interest due or accruing on these assessments up until July 5, 1923, will amount to $980.66.

Therefore, it is recommended by this court that the claimant be given an award in the amount of $980.66.

(No. 924—Claimant awarded $416.00.)

INDIANA BRIDGE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 10, 1927.

CONTRACT—*when State liable.* There being no dispute as to the facts and the law in this case the court enters an award in favor of claimant for the amount of his claim.

SAMPSON & GIFFIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for extra labor in changing the design and construction of the Peoria Armory at Peoria, Illinois.

On the 10th of May, 1923, claimant entered into a written contract with the defendant to provide all the materials and perform all the work shown on the drawings and described in the specifications for structural steel of the Armory building for the National Guard at Peoria, for an agreed price of $28,230.00.

On the 27th day of July, 1923, the defendant, through the Department of Public Works and Buildings, entered into a supplemental contract with claimant whereby claimant agreed to deliver and erect an additional steel truss for the building, together with columns, purlins, girts and lintels, for an additional sum of $6,400.00. This additional work made it necessary to change the drawings and, by direction of the supervising architect of the defendant, the necessary changes were made.

The Attorney General, on behalf of defendant, has filed a statement and attached thereto a letter from the supervising

engineer of the defendant in which he admits that claimant is entitled to an award for the changes made in the design and construction of the Armory. The proof of the claim is in the form of affidavits and claimant actually expended $416.00 in having these changes made. Claimant is therefore awarded the sum of $416.00 to reimburse it for the amount expended in having the changes made in the drawings.

(No. 929—Claimant awarded $303.43.)

WILLIAM C. BODMAN, CONSERVATOR OF THE ESTATE OF LYMAN L. BODMAN, AN INSANE PERSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

REIMBURSEMENT—*award may be made.* There being no dispute as to the facts in this case the court enters an award in favor of claimant.

POMEROY & MARTIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $303.43 paid to the Kankakee State Hospital for the support of Lyman L. Bodman while he was an inmate of said institution.

The Attorney General has filed a statement, to which is attached a letter from the director of the Department of Public Welfare in which the director admits the claim is just and recommends that it be allowed, and the Attorney General consents to an award in favor of claimant for that amount.

Claimant is therefore awarded the sum of $303.43.

(No. 935—Claimant awarded $351.25.)

THE COUNTY OF WILL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 10, 1927.

REIMBURSEMENT—*when State liable.* The State is liable to the County of Will for costs and expenses incurred in the prosecution of convicts for crime committed in the State Penitentiary at Joliet. (Sec. 39, Chap. 108, Hurd's Rev. St. 1917.)

HJALMAR REHN, States Attorney, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for $351.25 filed by Will County, Illinois, for costs and expenses incurred by that county in the prosecution of Thomas Ivers, alias James Murphy, for the murder of Julius Charles Waldman on December 29, 1924, the defendant and deceased both being inmates of the Joliet penitentiary at the time of the killing. The case was tried in the Will county Circuit Court and the defendant convicted and sentenced to 18 years in the Joliet penitentiary.

The Attorney General has filed a statement admitting the amount stated in claimant's declaration to be correct, and consents to an award in its favor for the sum claimed.

Section 39 of chapter 108 of Hurd's Revised Statutes of Illinois, 1917, provides that all fees and costs arising from the prosecution of convicts for crimes committed in the penitentiary at Joliet, which the county is now required to pay in like cases, shall be paid by the State. Under the provisions of this statute it is the duty of the State to reimburse the county for the fees, costs and expenses incurred and paid by it in the prosecution of the defendant, and claimant is therefore allowed an award in the sum of $351.25.

(No. 937—Claim denied.)

INDIAN REFINING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

SPECIAL ASSESSMENT—*property of State not liable for.* The property of the State is not subject to taxation or special assessment for a local improvement.

SAME—*when claimant not entitled to refund for mistake in payment of.* Where a special assessment is extended against property by mistake and the assessment so levied is paid by one not the owner thereof, it is the duty of the municipal corporation to correct the mistake, and the State is under no obligation to refund the claimant the tax paid even though the property belongs to the State.

SAME—*when defense may be waived.* A judgment entered against a person or his property without his having notice of the proceedings in which the judgment is rendered cannot be enforced, but such defect can be waived, and a payment of moneys under such judgment is a voluntary payment and no legal liability arises for a recovery of the moneys paid.

McGAUGHEY, TOHILL & McGAUGHEY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant is the owner of that portion of Blocks 7 and 8 in the city of Chicago bounded on the east by Western Avenue, on the west and north by the right of way of the Union Stock Yards and Transit Company Railroad Company and on the south by Illinois and Michigan canal property which is owned by the State. It is about 90 feet from the southeast corner of claimant's property to the canal. This strip of 90 feet is part of the canal tract and was formerly used for a towpath. There is a bridge over the canal where it intersects Western Avenue. In 1922 the city proposed to improve Western Avenue by the construction of a cement sidewalk along the west side of the avenue and across this 90 foot strip of canal land. To pay the cost of this improvement a special assessment was levied and, at the October term, 1922, of the county court of Cook county, was approved and confirmed. No assessment was levied or extended against the 90 foot strip but the cost of building the walk across that strip was levied and extended against the above property of claimant. Claimant had no knowledge of the proposed assessment and the confirmation

thereof until December 22, 1922, on which date it received a letter from the county treasurer informing it that if the assessment was not paid its property would be sold. On January 13, 1923, claimant paid the assessment amounting to $108.31. This suit is for the recovery of the sum so paid from the State. The above facts are all set forth in the declaration. The declaration also charges "that erroneously and by mistake the cost of constructing said cement sidewalk over and across said distance of ninety feet of the property of the State of Illinois was extended, assessed and confirmed against the property of claimant." The declaration further alleges that claimant paid the assessment "for the purpose of protecting its own interest and preventing the sale of its property and the accumulation of costs and expenses necessarily incident thereto", and "that upon the discovery of said mistake it applied to the proper authorities of the city of Chicago for a refund of said sum so erroneously assessed, extended and confirmed against its said property but that said authorities refused to make refund to claimant."

The Attorney General has filed no pleading to the declaration, but has filed a statement reciting he is not filing a statement, brief and argument but submits the claim for the consideration of the court.

No evidence has been taken in the case but there is filed with the declaration as an exhibit a copy of a check showing the payment of $108.31 by claimant on January 13, 1923, and also a copy of a receipt from the county treasurer showing payment of the assessment. That claimant paid the amount assessed against its property is not questioned. But there is also filed with the declaration as an exhibit a copy of a letter addressed to claimant by W. L. Sackett, Superintendent of Waterways, in which he says: "You are advised that the strip of land referred to is part of the towpath and reserved strip of the Illinois and Michigan canal being property of the State of Illinois and not subject to taxes or special assessments."

If the property is not subject to special assessments, then the city of Chicago had no power to levy a special assessment against it and claimant would acquire no right against the State by paying such assessment even though it was extended against claimant's property by mistake. All property belonging to the State is exempt from taxation. The Illinois and Michigan canal belongs to the State, and the city had no

power to assess any of the canal strip for street improvements. (*Chicago* v. *Ridge Park Dist.*, 317 Ill. 123.)

It is alleged in the declaration that the cost of constructing the sidewalk was to be paid for by special assessments and that such assessments were levied and extended and afterwards confirmed by the county court. It is well settled in Illinois that no property can be assessed for a local improvement unless such improvement will benefit the property, and the assessment can never exceed the benefits received. Property can only be assessed to pay the cost of an improvement which will benefit the property for the use to which it is devoted. Where land is restricted to a special use the measure of benefits which it may receive from a local improvement is the increased value of the property for such special use, not its increased value for some probable future use. (*Bensenville* v. *C. M. & St. P. Ry. Co.*, 316 Ill. 352.) The strip of ground in question was formerly used for a towpath and its use was restricted to canal purposes. It is difficult to see how it could have been benefited for those purposes by the construction of the sidewalk. And unless its value for canal purposes would be increased by the construction of the walk, it could not be assessed even were it not exempt from such assessments.

Claimant charges the assessment was levied and extended against its property by mistake. There is nothing in the record to sustain this allegation of the declaration. The authorities of the city of Chicago are presumed to know the law and to perform their duties in accordance with it. It will not be presumed that they intended to extend an illegal assessment against property of the State. It appears that the sidewalk extends from the southeast corner of claimant's property to the bridge over the canal, and the city authorities may have determined that the construction of the walk would benefit claimant's property the amount assessed against it. If the assessment was extended against claimant's property by mistake, as claimant alleges, it was the duty of the city authorities to have the error corrected when their attention was called to it. Their refusal to make any correction lends strength to the presumption no error was made.

Claimant alleges in its declaration that it had no notice of the levy and extension of the assessment against its property or of the hearing in court on the confirmation of the assessment, and that it did not learn thereof until December 22,

1922. If it be true that this assessment was made and confirmed without notice to claimant, it was void in so far as it affected claimant's property, and its collection could not be enforced. "It is elementary that a judgment entered against a party or his property without his having had notice of the proceedings in which the judgment was entered and without his having had an opportunity to be heard cannot be enforced." (*City of Chicago* v. *Jerome*, 301 Ill. 587.) Claimant avers in its declaration that it paid the assessment for the purpose of preventing costs and expense. Claimant had a right to waive the defect in the judgment and pay the amount assessed against its property in order to save expense if it saw fit to do so. Claimant's payment of this unenforceable judgment was voluntary and for its own benefit—to save it cost and expense—and does not give it any right to claim reimbursement from the State. Had claimant taken the proper course to protect its rights, it would neither have had to pay the assessment nor would its property have been sold. So far as this record shows the State was not a party to the assessment proceedings and had no knowledge thereof. If the city had made the State a party to the proceedings and had asked for an assessment against its property, the State could have defended on the ground that the property was not subject to assessment, or would not be benefited by the improvement, or that the assessment was greater than the benefits, or upon any ground it saw fit to urge. It is fundamental that every owner of property has a right to be heard before judgment is rendered against it. To hold that claimant can recover in this case is to deprive the State of this fundamental right. The claim is denied and the suit dismissed.

(No. 939—Claim denied.)

GEORGE W. BROWN, ADMINISTRATOR OF THE ESTATE OF ANNA L. BROWN, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

NON-LIABILITY OF STATE—*not liable for negligence of officers of sub-division of the State.* The State is not liable for the negligence of officers of a sub-division of the State.

SAME—*when court is without jurisdiction.* The court will not take jurisdiction and consider claims arising through the negligence of officers or other authorities of sub-divisions of the State.

HUBER & REIDY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover on account of an accident that resulted in the death of Anna L. Brown on the 7th day of November 1924. The injury was caused by the slipping of a Ford automobile, in which the deceased was riding, from a high road into a ravine at a point where the road crossed a culvert. The injury was sustained on a road in the township of Buffalo Prairie in the county of Rock Island, State of Illinois, and that at the time of the accident and for several years prior thereto said road at the place of accident was maintained, controlled and operated by said township of Buffalo Prairie operated by said township through its elected and appointed officers according to a stipulation between said parties herewith filed, and it was further stipulated that said road was not at the time of the accident maintained, controlled or operated by the State of Illinois nor any of its officers or agents excepting in so far as the township road officers are exercising a State function in the performance of their duties and that it was not a part of any of the State roads or Bond issue roads of the State.

There can be no contention as to any legal liability of the State. It does not appear that there is any authority for this court to consider this case as a matter of equity or good conscience and it is the opinion of this court that if the State of Illinois assumed every liability caused by a defective dirt road throughout the State that the obligation would be over-

whelming and would be an obligation far from that which the legislature had in mind when this court was created.

It is the opinion of the court that this comes within the rule announced many times, that this court would not take jurisdiction to consider the allowance of claims that might arise through the negligence of officers or other authorities in townships or other similar organizations of the State.

Therefore this claim is disallowed.

(No. 947—Claimant awarded $1,286.55.)

GLENS FALLS INSURANCE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

PRIVILEGE TAX—*when refund may be made.* There being no dispute as to the facts in this case the court enters an award in favor of claimant.

SAME—*when refund may be made of overpayment.* Where it clearly appears that through an error claimant overpaid the amount due the State for its privilege tax an award for the overpayment will be made.

C. J. DOYLE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim filed by the Glens Falls Insurance Company for a refund of $1,286.55 privilege tax overpaid to the Department of Trade and Commerce of the State of Illinois in the year 1924. This amount was paid by claimant to the city collector of the city of Chicago and, under the provisions of the statute, should have been credited on the amount of claimant's assessment for the year 1923, payable in 1924, but, through an error on its part, no claim for such credit was made.

The Attorney General has filed a statement, to which is attached as an exhibit a letter from the director of the Department of Trade and Commerce stating that claimant was entitled to credit on its assessment for the amount paid the city of Chicago as fire department tax, and recommending that upon due proof of such payment the claim be allowed. A letter from the city collector of Chicago, which is also made a part of the statement, shows that on August 21, 1923,

claimant paid the city of Chicago the sum of $1,286.55 as fire insurance tax.

The Attorney General files his written consent to an award being allowed claimant in the sum of $1,286.55. It is manifest that claimant has paid a double tax to the extent of the claim filed, and we therefore allow it an award of $1,286.55.

(No. 967—Claimant awarded $350.00.)

CLIFFORD C. HOOD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

NON-LIABILITY OF STATE—*not liable for acts of its militiaman.* The State is not liable for the torts of a State militiaman while engaged in military movements.

SOCIAL JUSTICE AND EQUITY—*award may be made.* Although the State is not liable for property damage caused by the act or tort of its militiaman, while in military movement, an award may be made to reimburse claimant for the damage sustained.

E. P. FIELD, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On August 29, 1925, a tractor belonging to Battery B, 123rd Field Artillery, while being driven along a street in Monmouth, Illinois, by a private of the organization, in military movement, under command of a superior officer, crashed into the automobile of claimant and badly damaged it.

On September 3, 1925, the board of officers of the 123rd Field Artillery met and heard evidence as to the cause of the accident and the amount of the damages. The board found that the accident was unavoidable and was caused by a defective steering apparatus on the tractor, and that neither the driver of the tractor, the owner of the automobile nor the officer in command was to blame. They further found the amount of damages to the automobile to be approximately $350.

The Attorney General has filed a statement, attaching thereto and making a part thereof a letter from the Adjutant General. In the Adjutant General's letter he states that the claim is a just one against the State, and that he does not wish to contest it.

The State is not legally liable for an act of a State militiaman while in military movement. Therefore, this claim is rejected.

However, as it appears there is merit in this claim, as an act of social justice the court recommends to the General Assembly that it appropriate to the claimant the sum of $350.00 to reimburse him for the damage sustained.

(No. 982—Claimant awarded $192.50.)

WATLING MANUFACTURING CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

FRANCHISE TAX—*when refund may be made.* Where a franchise tax has been erroneously paid after the expiration of charter of the corporation it is entitled to a refund of the tax paid.

BANGS & FRANKHAUSER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for a refund of a franchise tax erroneously paid by claimant to the Secretary of State after the expiration of its charter in January, 1924.

It is admitted by the Secretary of State that claimant's charter had expired prior to the payment, and the Attorney General has filed his written consent to an award being allowed claimant in the sum of $192.50.

As it is clear no tax was due from claimant, we accordingly award it the sum of $192.50.

(No. 984—Claimant awarded $596.20.)

COUNTY OF WILL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

REIMBURSEMENT—*when State liable. Convicts trial.* The State is liable for the costs and expenses incurred in the prosecution of convicts for crimes committed in the State Penitentiary.

HJALMAR REHN, States Attorney, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim filed by the county of Will for $596.20 for fees, costs and expenses incurred and paid in the prose-

cution of Otto Malm for the murder of John Mack on the 16th day of July, 1925, both being prisoners in the State Penitentiary at Joliet at that time. Malm was indicated and tried at the following September term of the Circuit Court of Will county, and was convicted and sentenced to the penitentiary for life.

The Attorney General has filed a statement in this case, to which is attached as an exhibit a letter from the warden of the penitentiary at Joliet. The statement and letter both admit that the facts set out in claimant's declaration in this case are true and correct, and the Attorney General in his statement consents to an award in favor of claimant in the sum of $596.20.

Section 39 of chapter 108 of Hurd's Revised statutes of 1917 provides that all fees and costs arising from the prosecution of convicts for crimes committed in the penitentiary at Joliet shall be paid by the State. Under this statute claimant is entitled to be reimbursed by the State for the amounts paid by it in the prosecution of that case. We therefore allow the claimant an award in the sum of $596.20.

(No. 985—Claimant awarded $213.75.)

COUNTY OF WILL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 10, 1927.

REIMBURSEMENT—*State liable for expenses of trial of convict.* This case is controlled by the decision of the court in the case of *County of Will v State, supra.*

HJALMAR REHN, States Attorney, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is filed by Will county, Illinois, for $213.75 paid out by claimant for costs, fees and expenses incurred in the prosecution of Howard Johnson, alias Howard Talbert, for the murder of Jerry Meyers on September 15, 1925. At the time of the killing both Johnson and Meyers were serving sentences in the State Penitentiary at Joliet, and the murder was committed in said penitentiary. Johnson was indicted for murder by the Will county grand jury at the September

term, 1925, of the Circuit Court, and at the same term he was arraigned and plead not guilty. After a jury was empaneled he withdrew this plea and plead guilty to the charge of murder, and was sentenced to the penitentiary for his natural life.

The Attorney General has filed a statement on behalf of the State, and attached as an exhibit to his statement a letter from the Warden of the State Penitentiary at Joliet, in which he admits the facts alleged in the claimant's declaration and consents to an award in favor of claimant in the sum of $213.75, the amount claimed in the declaration.

Under the provisions of Section 39 of Chapter 108 of Hurd's Revised Statute of 1917 and the admitted facts in this case, claimant is entitled to be reimbursed by the State for the amounts paid out by it on account of the prosecution of Johnson, and we therefore allow claimant an award in the sum of $213.75.

(No. 988—Claimant awarded $2,833.00.)

DORA GIRHARD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

WORKMEN'S COMPENSATION ACT—*award may be made under.* Where an employee of the State is killed while in the performance of his duty, an award may be made and the basis of compensation fixed by the provisions of the Workmen's Compensation Act.

KASSERMAN AND KASSERMAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE CLARITY delivered the opinion of the court:

The facts as appearing in this case are not disputed. It appears that Paul W. Girhard was an employe of the automobile department of the Secretary of State's office as an Automobile Investigator at a salary of $150.00 per month and expenses. He was furnished a motorcycle with side car in which to travel and was ordered to do duty in different parts of the State. On Oct. 25, 1925, under orders from the Secretary of State's office, he proceeded on his motorcycle to Fairmont a racing track near Collinsville, Illinois, to assist in taking care of the traffic there, and while returning from such employment on Oct. 31, 1925, to his home in Newton, Illinois, over Route 11, and when just east of Vandalia near an inter-

section he met an automobile approaching with its bright lights on, while at the same time there was a horse and buggy in front of them. Presumably the lights from the approaching car blinded him causing his motorcycle to strike the wheels of the buggy upsetting his motorcycle and throwing him to the pavement, his head striking the concrete causing a fracture of the skull and concussion of the brain which caused his death on Nov. 6, 1925.

The Attorney General comes and files statement, brief and argument in which the facts are admitted in so far as the deceased was a State employe and was engaged in a line of duty as such employe at the time of his death by said accident. The Secretary of State forwarded a letter to the Attorney General's office in which he recommended and urged that this case be settled on the basis of the Workmen's Compensation Act.

The Attorney General also suggests that under the Workmen's Compensation Act in this case said claimant should receive $3,750.00, plus the necessary medical, surgical, hospitalization and nursing services which appear to amount to $133.00 in this case.

It is therefore considered by the court that the claimant be allowed the sum of $3,883.00.

(No. 990—Claimant awarded $797.97.)

SAINT PAUL FIRE AND MARINE INSURANCE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

PRIVILEGE TAX—*when refund may be made. Overpayment.* Where a privilege tax has been assessed and paid, and credit therefor was not given by the department, and the tax is again paid for the same year, claimant is entitled to a refund of the overpayment.

C. J. DOYLE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim filed by the St. Paul Fire & Marine Insurance Company for a refund of $797.97 privilege tax overpaid to the Division of Insurance of the Department of Trade and Commerce of the State of Illinois in the year 1925. This

amount was paid by claimant to the city collector of the city of Chicago, and, under the provisions of the statute, should have been credited on the amount of its assessment for the year 1924, payable in 1925, but by oversight the credit was not given.

The Attorney General has filed a statement on behalf of the State to which is attached as an exhibit a letter of the Superintendent of Insurance which admits that claimant should have had a credit of $797.97 on its privilege tax for that year, and advises that the claim be allowed.

The Attorney General accordingly consents that an award be allowed claimant in the sum of $797.97. It is manifest that claimant has paid a double tax to the extent of the claim filed and we therefore allow it an award of $797.97.

(No. 993—Claimant awarded $250.00.)

C. A. ROBERTS CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

FRANCHISE TAX—*when claimant entitled to refund for overpayment.* Claimant is entitled to a refund of an overpayment of the tax, where it is required to pay an amount in excess of the tax due the State.

BENJ. F. CASSIDAY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim of C. A. Roberts Company for a refund of franchise tax erroneously paid to the Secretary of State for the period beginning June 30, 1921, and ending July 1, 1923. The amount of tax legally due the State for this period is the sum of $250, but the Secretary of State demanded and claimant paid $500.00.

The Attorney General has filed a statement on behalf of the State, and attached thereto as Exhibit "A" a copy of a letter from the Secretary of State in which he admits the claim is proper and should be allowed, and the Attorney General in his statement consents to an award of $250.00 in favor of claimant.

As it is clear claimant was erroneously required to pay $250.00 more tax than was due, we therefore allow an award in its favor in the sum of $250.00.

(No. 994—Claimant awarded $250.00.)

THE CABLE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

FRANCHISE TAX—*when refund will be made. Overpayment.* This case is controlled by the decision of the court in *C. A. Roberts & Co.* v. *State, supra.*

BENJ. F. CASSIDAY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim filed by the Cable Company for a refund of $250.00 franchise tax erroneously paid to the Secretary of State for the period beginning July, 1923, and ending June 30, 1924. The amount legally due the State from claimant for this period was the sum of $250.00, but the Secretary of State demanded, and claimant paid, $500.00.

The Attorney General has filed a statement and attached thereto a letter from the Secretary of State as an exhibit, in which the Secretary of State admits that this claim is just and should be allowed, and the Attorney General in his statement consents to an award in favor of claimant in the sum of $250.00.

As the amount of tax legally due was only $250.00, we therefore allow claimant an award in the sum of $250.00.

(No. 995—Claimant awarded $540.35.)

ENGLANDER SPRING BED COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

FRANCHISE TAX—*when claimant entitled to refund.* This case is controlled by the decision of the court in case of *C. A. Roberts & Co.* v. *State, supra.*

BENJ. F. CASSIDAY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for $540.35 filed by the Englander Spring Bed Company for a refund of franchise tax erroneously paid

to the Secretary of State for the period beginning June 30, 1924, and ending July 1, 1925, in excess of the amount legally due under the provision of the General Corporation Act.

The Attorney General has filed a statement, and attached thereto is a copy of a letter from the Secretary of State in which he admits that claimant is entitled to a refund of $540.35, and the Attorney General in his statement consents to an award in favor of claimant in the sum of $540.35.

As it is clear the State collected this sum in excess of the amount due it, we therefore allow an award in favor of claimant in the sum of $540.35.

(No. 1024—Claimant awarded $393.72.)

FEDERAL MATCH CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

FRANCHISE TAX—*claimant entitled to refund when.* There being no dispute as to the facts and no objection by the State, the court enters an award in favor of claimant.

BENJ. F. CASSIDAY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim of the Federal Match Corporation for a refund of $393.72 franchise tax erroneously paid to the Secretary of State for the period beginning July 1, 1925, and ending June 30, 1926, in excess of the amount legally due under the provisions of the General Corporation Act.

The Attorney General first filed a demurrer on behalf of the State, and afterward filed a statement, attached to which is a copy of a letter from the Secretary of State admitting claimant is entitled to a refund of $393.72, and the Attorney General consents to an award in favor of claimant for that amount.

As the State was overpaid that amount, the demurrer will be overruled and claimant awarded the sum of $393.72.

(No. 1027—Claimant awarded $1,871.95 with interest.)

STATE MUTUAL LIFE ASSURANCE COMPANY OF WORCESTER, MASS., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

PRIVILEGE TAX—*when claimant entitled to refund.* Where through a mistake the State has collected the privilege tax twice, claimant is entitled to a refund of the overpayment.

IRVING T. F. RING, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for a refund of excess privilege tax on insurance premiums paid by mistake to the Department of Trade and Commerce of the State of Illinois. Claimant is a corporation incorporated under the laws of Massachusetts for the purpose of issuing life insurance, and is licensed to do business in Illinois. The Metropolitan Life Insurance Company of New York is a corporation incorporated under the laws of the State of New York for the purpose of issuing contracts for life insurance, and is also licensed to do business in Illinois. A portion of the insurance written in Illinois by claimant was re-insured in the Metropolitan Life Insurance Company, this reinsurance being legal under the provisions of Chapter 73, revised statute of Illinois. The amount of premiums collected on the insurance that was reinsured in the Metropolitan Life Insurance Company was $93,597.38. On May 25, 1925, claimant paid a 2% tax on this sum, said tax amounting to $1,871.95. On June 22, 1925, the Metropolitan Life Insurance Company also paid a 2% tax on this same amount and for the same premiums.

It thus appears that a double tax has been collected by the State from the claimant and the Metropolitan Life Insurance Company, and that the State has received $1,871.95 more than is due it. The Metropolitan Life Insurance Company has filed a disclaimer in favor of claimant, and the Attorney General on behalf of the State has filed a written consent to an award in favor of claimant for that amount.

We, accordingly, award claimant the sum of $1,871.95, together with interest thereon at 3% per annum from May 25, 1925, until paid.

(No. 1028—Claimant awarded $1,049.24.)

JOURDAN PACKING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

CONTRACT—*when State liable.* The State is liable for supplies furnished the Dunning State Hospital.

SIEBEL & SEVERIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim of the Jourdan Packing Company for $1,049.24 for meats supplied the Dunning State Hospital in Cook county, Illinois. Payment was not made for the reason that invoices for the goods were received by officials in charge of the hospital after the close of the biennial period for appropriation of the 53d General Assembly.

The Attorney General filed a demurrer, and afterward filed a statement, attached to which are copies of letters from the Director of Public Welfare and the Managing Officer of said hospital admitting that the claim is a correct and proper charge against the State, and the Attorney General consents to an award in favor of claimant in the sum of $1,049.24.

As it is clear this amount is due claimant from the State, the demurrer will be overruled and claimant awarded the sum of $1,049.24.

(No. 1030—Claimant awarded $154.11.)

AMERICAN BOSCH MAGNETO CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

FRANCHISE TAX—*when claimant entitled to refund.* This case is controlled by the decision of the court in *Federal Match Corp. v. State, supra.*

BENJ. F. CASSIDAY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim of American Bosch Magneto Corporation for a refund of $154.11 franchise tax erroneously paid to the

Secretary of State for the period beginning July 1, 1925, and ending June 30, 1926, in excess of the amount legally due under the provisions of the General Corporation Act.

The Attorney General first filed a demurrer on behalf of the State and afterward filed a statement, attached to which is a copy of a letter from the Secretary of State admitting that claimant is entitled to a refund of $154.11, and the Attorney General consents to an award in favor of claimant for that sum.

As the State was overpaid that amount, the demurrer will be overruled and claimant awarded the sum of $154.11.

(No. 1048—Claimant awarded $200.00.)

THE CONSOLIDATED ASSURANCE COMPANY, LTD., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

PRIVILEGE TAX—*when refund may be made. Overpayment.* **Where there has been an overpayment of the tax through a mistake of the Department of the State, claimant is entitled to a refund of the amount overpaid.**

HAGEDORN & Co., for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for $200.00 refund of privilege tax erroneously paid to the Department of Trade and Commerce by claimant for the year 1921.

No defense of the claim is interposed by or on behalf of the State, and the Attorney General filed a statement and attached thereto as an exhibit a letter from the Director of the Department of Trade and Commerce in which he admits the overpayment was due to a clerical error and that the claim should be allowed. Accordingly, an award is allowed in favor of claimant in the sum of $200.00.

(No. 1064—Claim denied.)

FRANK J. HEINL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

STATUTE OF LIMITATIONS—*when claim barred by.* Where the declaration shows on its face that the cause of action is barred by the statute of limitations it will not be allowed.

JOHN J. REEVE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $554.53 paid to the Peoria State Hospital for the support of William Cox while an insane patient at said hospital. Claimant was appointed conservator of Cox August, 24, 1903, by the county court of Morgan county, Cox having been adjudged insane prior to that time. The money was paid by claimant March 23, 1914. In April, 1917, the law under which this payment is alleged to have been made was declared unconstitutional by the Supreme Court. This claim was filed July 2, 1926, more than nine years after that decision. The claim is not filed on behalf of Cox, nor by claimant in his official capacity as conservator, but on the theory that claimant will lose the money so paid to the hospital unless he is reimbursed by the State.

The above facts all appear from the declaration. To this declaration the Attorney General has filed a demurrer. Section 10 of the act creating the Court of Claims provides that every claim against the State cognizable by the court shall be forever barred unless it is filed with the secretary of the court within five years after it first accrues. It appearing on the face of the declaration that this claim was not filed within the time required by the statute, the demurrer is sustained and the case dismissed.

(No. 1069—Claimant awarded $556.25.)

PERFECTION STOVE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

FRANCHISE TAX—*refund when erroneously paid.* **Where it clearly appears that a larger tax has been computed by the Secretary of State through a mistake, than is due the State, and the tax is paid, a refund will be awarded for the overpayment.**

BENJ. F. CASSIDAY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for a refund of $556.25 franchise tax erroneously paid to the Secretary of State in excess of the amount legally due the State under the provisions of the General Corporation Act, for the year beginning July 1, 1924, and ending June 30, 1925.

The declaration alleges that claimant is a corporation existing under the laws of the State of Ohio; that on June 28, 1918, it was authorized to do business in the State of Illinois under the name of the Cleveland Metal Products Company, and is entitled to all the rights and privileges granted to foreign corporations under the laws of Illinois; that its principal place of business for Illinois is in Chicago; that it has a capital stock of $10,000,000.00; that on February 2, 1924, it filed a certificate of increase of capital stock from $10,000,000.00 to $15,000,000.00 and on June 2, 1924, filed a certificate of decrease of capital stock from $15,000,000.00 to $10,000,000.00. The declaration also states that on the 16th day of October, 1925, claimant filed with the Secretary of State of Illinois a certificate of amendment changing its name from the Cleveland Metal Products Company to the Perfection Stove Company.

The Secretary of State, through mistake, computed the franchise tax for the year ending June 30, 1925, on $15,000,000.00 capital instead of on $10,000,000.00. The tax as thus erroneously computed amounted to $1,000.00, which claimant paid, whereas, had it been correctly computed on the actual capital of $10,000,000.00, the tax would have been only $443.75. It thus appears claimant paid $556.25 more than the State was entitled to receive.

The Attorney General has filed a statement and attached thereto as a part thereof a copy of a letter from the Secretary of State, in which letter the Secretary of State admits that claimant is entitled to a refund of $556.25.

As it clearly appears from the sworn declaration of claimant and the statement of the Attorney General that a mistake was made in computing the franchise tax of claimant, we award claimant the sum of $556.25.

(No. 1073—Claimant awarded $277.78.)

E. E. STEPHENS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

CONTRACT—*when State liable.* The State is liable for work and material furnished for the improvement of its property.

S. BARTLETT KERR, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim of $277.78 is for materials and labor furnished for improvements at Fort Massac State Park on the request of the custodian of the Park and the State Supervising Architect. Claimant presented his statement for the amount due him to the Department of Public Works and Buildings, but it was received too late for payment, as the appropriation had then lapsed.

The custodian of Fort Massac State Park and the State Supervising Architect admit the claim is just and unpaid.

There being no dispute as to this claim, it is ordered by the court that an award be allowed in favor of claimant in the sum of $277.78.

(No. 1076—Claimant awarded $3,750.00.)

IDA DONAHUE, ADMINISTRATRIX OF THE ESTATE OF ROBERT J. DONAHUE Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

GOVERNMENTAL FUNCTION—*State not liable.* The State is not liable for injuries sustained by its employees while in the performance of their duty at its State Penitentiary.

SOCIAL JUSTICE AND EQUITY—*award may be made.* While the State is not liable, yet where claimant is engaged in a hazardous employment the court will as a matter of social justice and equity enter an award in his favor.

ALFRED A. ISAACS, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears from the allegations in this case that Robert J. Donahue, now deceased, was on the 19th day of September, 1922, employed by the defendant and in and about his duties as deputy warden of the Southern Illinois Penitentiary at Menard, Illinois, and in the course of such employment, he was attacked by two convicts who were prisoners in the institution aforesaid, and who were attempting to escape from said penitentiary. In the attack the said Robert J. Donahue was struck with an iron bar and a steel shovel by the said convicts. It is charged by claimant that the said deceased came to his death as a result of such injuries. It is further alleged that said deceased left surviving him his widow and three children who were dependent upon him for support. There does not appear to be much contradiction as to the facts as alleged except that the Attorney General contends that the decline in health of the deceased, was not steady between the time of the injury and the time of the death of the deceased and that the testimony of some of the doctors on cross examination was not certain in that it would be more or less a conjecture. However the Attorney General admits there can be argument on same both for and against claimant.

However there is no question but what the deceased was struck by the convicts with heavy instruments and severely injured while in course of employment. The evidence shows that he was performing his duties bravely and loyally, and it

appears that he was a man who served the State well and faithfully for some considerable time, and that he was ready and willing to face severe dangers to carry out the trust reposed in him by his employer, the State of Illinois. And it would appear to this court that this is a case that would come within the rule of equity and good conscience. Here is a faithful employee who received serious and fatal injury in a line of duty and from all the evidence and files in the case, we are of the opinion and this opinion is sustained by reasonable conclusions in face of all the facts and circumstances that such injury caused the death of the said Donahue; that said deceased left dependents who had a right to his support and care.

Therefore it is the opinion of this court that allowance should be made based upon the rules of the Workmen's Compensation Act of the State of Illinois, and this court hereby recommends the allowance to claimant of $3,750.00.

(No. 1079—Claimant awarded $550.00.)

BESSIE BRINKERHOFF, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

FEES & SALARIES—*award may be made for balance due on salary.* A State employee is entitled to recover the salary fixed by the Legislature for such employment.

EVAN L. SEARCY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant, a resident of Springfield, Illinois, claims that she was employed by the State of Illinois in the position of stenographer-bookkeeper in the general manager's office of the Illinois State Fair; that by an act of the 53d General Assembly, effective July 1, 1923, her salary was fixed at $1,800.00 per annum; that the wages formerly paid for this position before said act went into effect, was $1,500.00 per year, the increase being $25.00 per month; that she continued her employment for a period and received pay at the rate of $1,500.00 per year for two years, but was paid for two months

at the rate of $150.00 per month which left twenty-two months of her employment in which she did not receive the $25.00 per month additional as allowed by the legislature, therefore leaving a balance due her of $550.00. It appears from copies of letters herewith filed that the Department of Agriculture does not care to oppose the above claim. It therefore appears to the court that, as a matter of equity and good conscience, this employe of the State of Illinois should receive the wages that the Legislature of the State of Illinois deemed proper to allow for the occupant of this position.

This court therefore recommends that claimant be allowed the sum of $550.00.

(No. 1060—Claimant awarded $17,039.09 with interest.)

FRANK C. FEUTZ COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

CONTRACT—*hard roads. When State liable.* Claimant entered into a contract with the State for the construction of a part of its Hard Road State Bond Issue Route No. 3, and proceeded to carry out the terms of the contract and expended money for material and labor under his contract when he was compelled by an order of court to stop work and a writ of mandamus was issued against the Department of Public Works and Buildings directing the location of the highway, specified in the contract, upon a route not contemplated in the contract and by virtue of the order of court claimant was forced to abandon the work upon the route specified in his contract: *Held*, Claimant entitled to an award for material furnished and labor performed under his contract.

OTTO MCMAHAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DEHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

Claimant in this case avers that on June 23, 1925, the claimant corporation entered into a contract with the State of Illinois, through the Department of Public Works and Buildings, Division of Highways, whereby claimant agreed to construct and build State Bond Issue Route No. 3, Federal Aid Project No. 93, Section 32, copy of contract being attached to and made part of claim; that pursuant to said contract and bid previously made by claimant, and the award of the work to claimant, they proceeded to perform their part

of contract and continued upon said work until the 17th day of July, 1925, when the circuit court of Sangamon county, Illinois, issued an order, based upon a petition previously filed by the people of the State of Illinois, at the May term of said court for the year 1925, in a cause entitled "*The People of the State of Illinois ex rel J. C. Bartlow et al.* v. *The Department of Public Works and Buildings of the State of Illinois*, Cornelius R. Miller as Director of Public Works and Buildings and Frank T. Sheets, Superintendent of Highways," by which order of said court, it was decreed that the route upon which the work had been done and was being done by claimant was more than a minor change from the route as fixed by an act of the Legislature of the State of Illinois previously enacted; that said order made by said court on July 17, 1925, directed that a writ of mandamus issue as prayed for to said defendants and said order commanded said defendants to locate said highway upon a route different from the route contemplated by said contract entered into by claimant, and on July 17, 1925, as directed by said order, claimant abandoned said work upon said route; that all work done and labor performed by claimant from May 11, 1925, until and including July 17, 1925, was done in good faith and the material for the work was furnished in good faith; that claimant was never paid for said labor and materials, and makes claim for $17,640.00, together with interest thereon.

We find that the Attorney General, on recommendation from Hon. C. R. Miller, Director of the Department of Public Works and Buildings of the State of Illinois, has consented to the allowance of said claim, and recommends that said claim be allowed, in the sum of $17,039.09 with interest.

We therefore award to the claimant, Frank C. Feutz Company, the sum of $17,039.09, together with interest thereon from July 17, 1925, at the rate of 5% per annum.

(No. 1087—Claimant awarded $4,269.74.)

GRENNAN BAKERIES, INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927.

CORPORATION—*initial fee. When refund made for overpayment.* Where by an oversight of the Secretary of State claimant was required to pay a larger initial fee than the State is entitled to receive, a refund of the overpayment will be awarded.

JAMES L. BROWN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for the return to claimant of the sum of $4269.74 paid to the Secretary of State to cover the initial fee due the State on the increase of its capital stock. It appears from the record in the case that on June 22, 1925, claimant paid the Secretary of State an initial fee of $4269.74 covering its increased capitalization, and again on June 30, 1925, paid him an initial fee of $5037.09 to cover the same increased capitalization. The last payment appears to be the correct amount due the State, and claimant should have been credited with the first payment and have been required to pay only the difference between the amount paid June 22nd, and the correct amount of fee due. By some oversight in the office of the Secretary of State, this was not done, and claimant was required to pay $4,269.74 more than was due. This the Secretary of State admits in a letter attached to the declaration as an exhibit. In a letter to the Attorney General, a copy of which the Attorney General has filed in the case, the Secretary of State says the facts shown in the declaration and exhibits are true and that claimant is entitled to a return of the amount claimed in its declaration.

The Attorney General first filed a demurrer to the declaration, but after investigation filed a statement including the copy of the letter from the Secretary of State above mentioned.

As it is clear claimant paid the State $4,269.74 more than was due, the demurrer is overruled and claimant is allowed an award for that amount.

(No. 1109—Claimant awarded $25.00.)

WILLIAMS ARTICULATOR COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 10, 1927.

FRANCHISE TAX—*award may be made when.* Where a franchise tax has been assessed and is paid, and it appears afterwards that on account of misstatement in the annual report of the corporation, to the Secretary of State, the tax paid is in excess of the amount legally due the State, a refund of the overpayment may be awarded.

WILLIAMS ARTICULATOR COMPANY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for refund of franchise tax paid to Honorable Louis L. Emmerson, Secretary of State, on account of mis-statement in the annual report of the claimant. It appears that said company paid a tax of $25.00 in excess of the amount of taxes lawfully assessable against said claimant.

We therefore award to the said claimant, Williams Articulator Company, the sum of $25.00.

(No. 683—Claimant awarded $260.00.)

STANLEY STACHOWIAK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

RESPONDEAT SUPERIOR—*State not liable for torts of inmates of its institutions.* While the State is not liable for the torts of an inmate of its institution, an award may be made to claimant for an injury sustained and damage caused by the negligence of an inmate of its institution.

GOREY & GOREY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for damages caused by reason of an accident which occurred on the morning of May 2, 1924, between six and seven o'clock at the intersection of Hickory and Ruby streets in the city of Joliet, Illinois, whereby claimant was struck by a truck operated by an inmate of the state penitentiary.

The truck continued traveling after striking the claimant, for a distance of about fifteen feet or more, when it crashed into a curbing north of Ruby street, and there is some testimony to the effect that the driver of the truck did not sound his horn until he was about to strike claimant. This testimony is contradicted by witnesses for the State. We are of the opinion that the driver of the State truck was guilty of negligence in not stopping his car when he saw the claimant crossing the street "head down." It is the duty of the driver of an automobile or truck to keep a careful and prudent lookout for pedestrians, in order to avoid colliding with them. From the evidence submitted here on behalf of claimant, this was not done.

As the amount of damages, it appears from the evidence that claimant was disabled for a period of six months, and that he was earning about $3.60 a day, and that he incurred a doctor's bill amounting to $50.00.

While we do not believe that there is any legal liability on the part of the State for damages sustained by the claimant, yet as a matter of equity and good conscience we award to claimant $260.00.

(No. 687a—Claim denied.)

MOLINE PLOW COMPANY, INCORPORATED, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

FRANCHISE TAX—*when court is without jurisdiction to refund.* The court is without jurisdiction to award a refund of a franchise tax erroneously paid, where claimant has a remedy at law in a court of general jurisdiction.

SAME—*rule of equity and good conscience.* This court will not invoke the rule of equity and good conscience in a case where claimant has an adequate remedy at law in a court of general jurisdiction.

SAME—*will not usurp powers of court of general jurisdiction.* This court will not invade the field of courts created by the constitution, nor usurp the powers of or contradict or compete with courts of general jurisdiction.

SECRETARY OF STATE—*will not review acts of.* The Secretary of State is a constitutional officer and the court will not review his acts or conduct in the administration of the duties of his office, where the party aggrieved has a remedy at law in a court of general jurisdiction.

L. C. SHONTS, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant, a foreign corporation, presents claim for refund of payments demanded and collected from it by the Secretary of State as franchise taxes and initial fees in excess of the amount claimed legally due. We will not discuss the legal merits of this claim or the particular phases of claimant's contention as against the Secretary of State for collecting these fees, or whether or not the fees collected were excessive, illegally collected, or improperly collected as it is the intention of the court to dwell only upon the question of taking jurisdiction of cases wherein a remedy at law was provided by statutes in courts of general jurisdiction.

This court is impressed with the vast increase of demands filed in this court and consequently it is considered necessary and proper to establish a precedent in this line of cases in harmony with opinions heretofore announced in other claims, in that wherein a claimant had a remedy in a court of general jurisdiction and failed to pursue such remedy, that this Court would not take jurisdiction.

It cannot be urged that there would be any need of this court if there was a remedy prescribed by statutes for all

the cases that could be brought before this court. We do not believe the court should invoke the rule of equity and good conscience in a case where claimant had an adequate remedy at law and it would not seem consistent for this court to adopt any rule in conflict with the well established practice of courts of general jurisdiction in the State of Illinois. In such courts if a complainant slept on his legal rights, no court of equity would take jurisdiction on the theory that the claim was just or equitable if the complainant failed to pursue his legal remedy in apt time. Therefore can it be assumed that the Legislature of this State had in mind at the time it created this court a plan to open wide the doors to all litigants to choose between the courts already established by the constitution and this court, or was it not the thought back of the act creating this court, to give claimants the right to recover legal claims or claims sustained by the rule of equity and good conscience an opportunity to be heard who had no right either by the basic law of the State or through statute to pursue their claim for relief in any court of general jurisdiction? It is the opinion of this court that it should not invade the field of courts created by the constitution of the State and we believe that it cannot be contended that the Legislature intended to create this court to usurp the powers of, to contradict, or to compete with courts of general jurisdiction.

This court wishes to cite herein the following provisions of the statutes taken from the brief and argument of defendant which seems to support the contentions heretofore in this opinion stated:

Paragraph 172, Chap. 127, Smith-Hurd's Statutes, 1923 (Section 28, of Act in Relation to Payment of Public Money of the State into the State Treasury, approved June 9, 1911), the provision that requires the Secretary of State, among other officers, "to hold for thirty days all moneys received for or on behalf of the State under protest and on the expiration of such period, to deposit the same with the State Treasurer, unless the party making such payment shall within such period file a bill in chancery and secure a temporary injunction restraining the making of such deposit, in which case such payment shall be held until the final order of decree of the court."

There is also another theory which this court considers proper to comment on in passing on the propositions involved in this case.

The office of the Secretary of State was created by the constitution of the State. The constitution and the Legisla-

ture placed large responsibilities upon the incumbent of this office. The rapid increase of the population of this State has increased many fold the duties of this officer. Therefore it would seem that this court should be reluctant to enter any order that might presume to review the acts or conduct of the man whom the people of the State of Illinois placed in this high position of prominence and responsibility in view of the fact that in cases of this character the Legislature provided a method wherein a claimant would believe himself to be aggrieved by the acts of the Secretary of State that he could proceed as indicated in the statute above cited in courts of general jurisdiction making the Secretary of State a special defendant, thereby giving this officer an opportunity of being heard directly and his acts reviewed by a court of general jurisdiction with such rights of appeal that may be provided by law. Therefore it appears to the court in fairness to all concerned that in all cases where the law of this State provides a remedy for a hearing in courts of general jurisdiction that claimant should avail himself of this method rather than come to this court.

Therefore, for the reasons aforesaid, this claim is disallowed.

(No. 690—Claim denied.)

PYRAMID LUMBER COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

FRANCHISE TAX—*when court without jurisdiction to refund.* The case is governed by the decision of the court announced in the case of *Moline Plow Company* v. *State, supra.*

HOPKINS, STARR & HOPKINS, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

For the reasons set forth in the opinion filed in this court in the case of *Moline Plow Company* v. *State of Illinois,* No. 687a, this claim is disallowed.

(No. 713—Claim denied.)

WILL & BAUMER CANDLE CO., INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

FRANCHISE TAX—*when court without jurisdiction to refund.* The decision of the court announced in the case of *Moline Plow Co.* v. *State*, *supra*, governs this claim.

ALBERT J. WILL, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

For the reasons set forth in the opinion filed in this court in the case of *Moline Plow Company* v. *State of Illinois*, No. 687a, this claim is disallowed.

(No. 783—Claim denied.)

DEARBORN CHEMICAL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

FRANCHISE TAX—*when court without jurisdiction.* The decision of the court announced in the case of *Moline Plow Co.* v. *State*, *supra*, governs this claim.

MILLS & HOWE, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

For the reasons set forth in the opinion filed in this court in the case of *Moline Plow Company* v. *State of Illinois*, No. 687a, this claim is disallowed.

(No. 804—Claim denied.)

GARDNER GOVERNOR COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

FRANCHISE TAX—*when court without jurisdiction to refund.* This case is governed by the decision of the court in *Moline Plow Co.* v. *State, supra.*

JOHN T. INGHRAM, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

For the reasons set forth in the opinion filed in this court in the case of *Moline Plow Company* v. *State of Illinois,* No. 687a, this claim is disallowed.

(No. 886—Claim denied.)

WESTERN NEWSPAPER UNION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

FRANCHISE TAX—*when court without jurisdiction to refund.* This case is controlled by the decision of the court in *Moline Plow Co.* v. *State, supra.*

TENNEY, HARDING, SHERMAN & ROGERS, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

For the reasons set forth in the opinion filed in this court in the case of *Moline Plow Company* v. *State of Illinois,* No. 687a, this claim is disallowed.

(No. 957—Claimant awarded $2,730.00.)

MEAKIN KEITH, ADMINISTRATOR OF THE ESTATE OF HENRY T. KEITH, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

GOVERNMENTAL FUNCTION—*hard roads. When State not liable.* The State in constructing its hard roads exercises a governmental function and is not liable for injuries sustained by its employees thereon.

WORKMEN'S COMPENSATION ACT—*award made under.* Although no legal liability exists against the State, an award may be made to an employee of the State who is injured in the course of his employment, and compensation fixed according to the provisions of the Workmen's Compensation act.

KNOTTS & KNOTTS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim growing out of injuries sustained by one Henry T. Keith, while employed by the State of Illinois, Department of Public Works and Buildings, Division of Highways.

The evidence shows that the claimant, Henry T. Keith, had been employed by the Department of Public Works and Buildings of the State of Illinois, Division of Highways, some time prior to the accident which occurred on May 3, 1924; that he was employed as a common laborer at a wage of $3.60 a day in and about the repair and maintenance of Section 607 on Route 4 of a certain public highway, and that in the course of his employment he was under the supervision and direction of the Division of Highways.

That at about 10 o'clock A. M. on the 3rd day of May, 1924, the said Henry T. Keith was pouring, by hand, heated asphalt from a vessel somewhat similar to a garden sprinkler into a certain crack in said pavement near the center of the north half of said hard road at a point about a quarter of a mile east of the village of Nilwood in the county of Macoupin, where said hard road extends in an easterly and westerly direction, and in so pouring said asphalt as aforesaid said Henry T. Keith was facing southward.

That on the date of the injury while said Henry T. Keith was employed as aforesaid, one Gustin Wilton drove his Ford touring car at the rate of about ten or fifteen miles an hour

along said highway where said Henry T. Keith was working; that the said Wilton, when within a short distance of the said Henry T. Keith, suddenly and without warning drove his car in a careless and incompetent manner along said highway in such a way as to strike the said Henry T. Keith with such force and violence that he, Keith, was thrown for a distance of ten or fifteen feet, rendering him unconscious; that the impact of said automobile broke both bones of the right leg of Keith and dislocated his right shoulder, tearing the ligaments of the same, and also badly bruising his body.

That as a result of said injuries sustained by Keith, he was confined in the Springfield Hospital at Springfield, Illinois, for a period of about one month and was wholly prevented from earning any wages or from pursuing any gainful occupation for a period of eleven months from and after the date of his injuries, and that he was permanently disabled in the use of both his right leg and right arm to the extent of 50% in the former and 40% in the latter; that prior to the accident Henry T. Keith was able-bodied; that at the time of his injury he was 62 years of age.

The Attorney General, on behalf of the State of Illinois, has filed a demurrer, which, as a proposition of law, is sustained. It is an old established rule of law that the State of Illinois is not liable for the torts of its officers, agents or employes; that the State in conducting the Division of Highways exercises a governmental function and is not liable for injuries to those in its employ.

However, it has been the practice of this court, where claims of employes for injuries sustained while in the employment of the State to follow the Workmen's Compensation law in allowing claims for injuries in order that equity and justice be done to injured employes.

There is no dispute in the evidence, and the statement filed by the Attorney General admits that the statement, brief and argument of claimant is a correct statement of facts and that claimant properly applies the law under the Workmen's Compensation Act; that claimant's statement, brief and argument are accepted and the case submitted to the court for such disposition as they care to make on the basis of the Workmen's Compensation Act.

According to the statement of claimant, the acceptance of said statement by the Attorney General and the fact that the

evidence is undisputed, we will allow this claim in accordance with the Workmen's Compensation Act, as follows:

The sum of $514.80 for temporary total disability, computed as follows: $10.00 per week, being 50% of his average weekly wage of $21.60, for a period of 47 2/3 weeks; and also the sum of $1,922.40 for his said permanent partial injuries, computed as follows: for the permanent partial loss of the use of his right leg 50% of 50% of his average weekly wage of $21.60 for a period of 180 weeks, making a total of $972.00, and for the permanent partial loss of the use of his right arm and shoulder 40% of 50% of his average weekly wage of $21.60 for a period of 220 weeks, making a total of $950.40, and for the reasonable expenses amounting to the sum of $293.00, making a final total of $2,730.00.

We therefore allow this claim in the sum of $2,730.00.

(No. 958—Claim denied.)

CORA D. SUMMER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

SERVICES—*when State not liable.* Where claimant fails to comply with the requirements of the Civil Service Law no recovery can be had for personal injury sustained or services rendered while in the employment of a department of the State.

PEARL M. HART, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant, Cora D. Summer, has filed in this court a claim in the total sum of $11,135.00, on account of a purported injury to her eye, and for extra work done while she was employed, under civil service, as stenographer in the Attorney General's office. To the petition filed on September 10, 1925, the Attorney General has filed a demurrer, which is sustained.

There is a large volume of testimony, and we believe there can be no question as to the ability of Miss Summer to handle the work assigned to her by her various employees. However, she has not complied with the requirements of the Civil Service Law necessary to entitle her to recover for any

injury to her eye. She has received and accepted the salary allotted to her on acceptance of the positions which she held. We believe that the Attorney General had the power and authority to discharge the claimant for the reasons set out, as required by the statute, and that he properly exercised his power. The claim is accordingly disallowed.

(No. 963—Claim denied.)

ABE VANNOY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

WORKMEN'S COMPENSATION ACT—*when State not liable under provisions of.* The Workmen's Compensation act does not make an employer an insurer against all injuries sustained by his employees, nor does it apply to every accidental injury that may happen to a workman during his employment.

SAME—*how liability arises.* It is not enough that the injury was sustained in the course of the employment, but it must also arise out of the employment.

SAME—*burden of proof upon claimant.* The burden of proof is on the claimant to prove by direct or positive evidence that the accident causing the injury arose out of and in the course of his employment.

SAME—*what does not constitute conveyance under the act.* The fact that the State furnished gas and oil for claimant's car, when not required by the contract of employment, did not make the car a conveyance furnished by the State.

ASSUMPTION OF RISK—*when claimant assumes risk.* When claimant used the public highway in going and returning from his work he assumed equally with the general public all the risk incident thereto.

SAME—*injury must be traceable to this employment.* The injury must be traceable to the employment as the proximate cause. If it comes from a hazard to which the employee is equally exposed aside from his employment, it does not arise out of the employment.

SAME—*when employer is not liable.* An employer is not liable for an injury sustained by an employee in going to or from his work, unless the injury occurred on the premises of the employer or in a conveyance furnished by the employer.

CONSTRUCTION OF STATUTE—*compensation act, sec. 1.* The term "arise out of" as used in the compensation act, points to the origin of the cause of injury, and the term "in the course of" points to the time, place and circumstances under which the injury occurred.

ROBERT FERDINAND TUNNEL, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

To the declaration of claimant in this case the Attorney General has filed a general and special demurrer. After the

filing of the demurrer it was stipulated by counsel for claimant and the Attorney General that claimant might take the depositions of his witnesses to be read in evidence in support of his claim. Under this stipulation the depositions of claimant's witnesses were taken, the Attorney General being represented by one of his assistants. Although the declaration is informal and inartificially drawn, in view of the above facts, the demurrer will be overruled and the cause will be heard as though a general traverse of the declaration had been filed.

The evidence shows that claimant was employed by the State as a general laborer on one of the State's paved roads and was working somewhere between Woodriver and Nameoki. It is not clear from the evidence just what his duties were, nor where he worked. He said, "I was trimming along the pavement for the work." He lived at Woodriver and went from his boarding place to his work in his Ford car. He said, "We had been working right towards Nameoki." He began work at 7 o'clock in the morning and worked nine hours, for which he was paid 40 cents an hour. On the morning of June 26, 1925, he got in his car and started to his work. After he had gone about three blocks from where he boarded he said "There was a man coming up the road and I stopped to keep from running into him and my car stopped dead, and I got out to crank it and it kicked me". The blow from the crank broke the ulna of his right arm two or three inches above the wrist. The fracture was reduced by a physician and at the time the testimony was taken in November, 1925, his arm was still somewhat stiff and sore and he could not use it to do heavy work. The accident occurred in Woodriver at about 6:30 in the morning.

It is the contention of claimant that his injury arose out of and in the course of his employment, and that under the provisions of the Workmen's Compensation Act the State should compensate him for the injury. Assuming, but not deciding, that the Workmen's Compensation Act applies to the State, the burden is on claimant to prove by direct and positive evidence that the accident causing the injury arose out of and in the course of his employment. (*Madison Coal Corp. v. Industrial Com.*, 320 Ill. 298). The Workmen's Compensation Act does not make the employer an insurer against all injuries; it does not apply to every accidental injury that may happen to a workman during his employment. It is not enough that the

injury was received in the course of the employment but it must also have arisen out of the employment; it must have been the result of some risk which it can be seen might have been reasonably contemplated as incidental to the employment (*Boorde* v. *Industrial Com.*, 310 Ill. 62). If the injury be not fairly traceable to the employment at the proximate cause or if it comes from a hazard to which the employee would have been equally exposed aside from the employment, it does not arise out of the employment. The causative danger must be peculiar to the work and incidental to the character of the business. (*Edelweiss Gardens* v. *Industrial Com.*, 290 Ill. 459). It appears from the evidence that claimant was a day laborer employed to do general work in the maintenance of a State paved road. His duties began at 7 in the morning and continued for nine hours. The injury occurred at 6:30 in the morning on a public highway in Woodriver. It is therefore apparent that the injury did not arise out of or in the course of his employment.

Claimant, however, contends that as the injury occurred after he had started to his work it did arise out of and in the course of his employment, and cites in support of his contention *Friebel* v. *Chicago City Ry. Co.*, 280 Ill. 76; *Rainford* v. *Chicago City Ry. Co.*, 289 Ill. 427, and *Wabash Ry. Co.* v. *Industrial Com.*, 294 Ill. 119. There is language in the *Friebel* case which warrants the position of claimant but that language was *obiter dictum* and has since been so declared and modified. (*Fairbanks Co.* v. *Industrial Com.*, 285 Ill. 11; *Schweiss* v. *Industrial Com.*, 292 Ill. 90). The *Rainford* case cited by claimant does not decide this question and is not in point. In that case the plaintiff was not injured on his way either to or from work, but was injured while on the premises of his employer. No case has been cited, and we have been unable to find any, holding the employer liable for an injury received in going to or from work unless the injury occurred on the premises of the employer or in a conveyance furnished by the employer. The general rule is that one's employment does not begin until the place where he is to work is reached and does not continue after he has left unless the conveyance in which he travels to and from the premises is furnished by the employer. An accident suffered by an employee on his way to or from his work cannot be held to arise out of the employment unless it occurs after he has arrived at or before

he leaves the sphere of his employment. (*Schweiss* v. *Industrial Com., supra*). In order to make the employer liable the injury must "arise out of and in the course of" the employment. The term "arise out of" points to the origin of the cause of the injury, and the term "in the course of" points to the time, place and circumstances under which the injury occurred. (*Board of Education* v. *Industrial Com.*, 321 Ill. 23; *D. U. & C. Ry. Co.* v. *Industrial Com.*, 307 Ill. 142). In *Fairbanks Co.* v. *Industrial Com., supra*, the facts were somewhat similar to the facts in this case. In the performance of his duties the employee was required to visit the plants of others than his employer to inspect the fats offered for sale to his employer and to obtain samples of such fats. It was his custom, if he could obtain the samples in time, to return with them to his employer's plant before 6 o'clock. But if he could not finish his inspection and obtain the samples in time to return to the plant before closing time, he would bring the samples to his employer's plant the next morning. On the day of the accident he had been sent to the plant of Darling & Co. to procure samples of fat. He left the plant of Darling & Co. about 7:20 with a small pail of tallow and walked about two blocks where he was struck and killed by a street car. The Industrial Commission allowed compensation on the ground that the injury arose out of and in the course of the employment of the deceased, and the circuit court refused to set aside its decision and award. The judgment of the circuit court was reviewed by the Supreme Court on writ of error. In the opinion, pages 13 and 14, the Supreme Court said: "In our view of the case it is immaterial whether or not he had left the pail of tallow with some friend in that locality until he should return for it on the following morning or whether he still had it at the time he was killed. The deceased had finished his work for the day and was on his way to his home at the time this accident occurred, and the sole question for our determination is whether the accident arose out of and in the course of his employment. * * * When work for the day has ended and the employee has left the premises of his employer to go to his home the liability of the employer ceases, unless after leaving the plant of the employer the employee is incidentally performing some act for the employer under his contract of employment. * * * In this case there is no circumstance to show that after the deceased had left the plant of Darling & Co. he was performing any

mission for his employer. He had completed his work for the day. It is true that he had in his possession a small pail of tallow which it was necessary for him to deliver at the plant of plaintiff in error the next morning, but if he still retained possession of this pail at the time he was injured he did so for his own convenience, and that fact did not contribute in any way to his injury. * * * At the time the deceased was injured his duties for the day had ceased and he was on his way to his home. He was not doing anything incidental to his employment, and the applicant is not entitled to compensation for his death." The reasoning of the Fairbanks case applies with equal force to the facts in this case. Claimant was not fulfilling any duty of his employment before he arrived at the place where he was to work. The same reason would bar recovery for an injury received in going to work as one received on returning from work. It is said the State furnished the gasoline and oil claimant used in his car and that is urged as a reason for holding the State liable. The State was not required by its contract of employment to furnish the gasoline and oil to claimant and its doing so did not constitute his car a conveyance furnished by the State. Neither did the fact that he had his tools in the car at the time of the injury change the rule. He no doubt took them back and forth because it was more convenient to do so than to store them in the tool house.

Claimant was injured on a public highway in Woodriver a half hour before time for him to begin his work. He was not at the place where he worked, and must have been a considerable distance from it if he expected to be thirty minutes driving there in his automobile. His contract of employment required him to be at his place of work at 7 o'clock, and it was immaterial to his employer what method he used to get there. If he traveled the public highway he assumed all the risk incident thereto, whether he traveled on foot or in an automobile, and such risk was not incident to—did not arise out of—his employment. It was a risk to which he was exposed equally with the general public.

The claim is therefore denied and the suit dismissed.

(No. 970—Claimant awarded $1,000.00.)

WILLIAM A. CROOKSTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

MILITARY SERVICE—*when award may be made.* Where claimant an officer of the Illinois National Guard under orders from his superior officer, is injured while obeying said orders, the court may as a matter of social justice and equity allow an award to him for the injuries sustained.

CLARENCE B. DAVIS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Claimant is in the employ of the State Auditor's office. He is also an officer of the Illinois National Guard; that in the summer of 1925, while as such officer he attended the guard encampment at Camp Grant. On Sunday afternoon, August 23, 1925, claimant was ordered by a superior officer at Camp Grant to place entries for the Roman race. The entries were placed, and while claimant was obeying his orders he was struck by an unmanageable horse ridden by another superior officer. The claimant was knocked down, sustaining injuries to his face and jaw. His upper jaw bone was broken and five teeth were knocked out at the time. His lower lip was cut and his entire face was bruised. He was taken to a hospital at Rockford, Illinois, where his injuries were dressed and treated, and as a result of the accident fourteen of the upper teeth and a portion of his jawbone were removed. In fact, it was shown by the testimony that he suffered a considerable length of time on account of this injury and that he is now using artificial teeth, although it is shown that his teeth were in fair condition before the accident occurred. There is no contradiction of hearing as to the extent of the injury or the manner of the accident, and it appearing to the court that this claimant suffered this accident while in a line of patriotic duty therefore, as a matter of equity and good conscience, an allowance is recommended.

Therefore it is considered by the court that claimant be allowed $1000.00.

(No. 989—Claimant awarded $1,058.50.)

ALICE WIGGINTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

WORKMEN'S COMPENSATION ACT—*award may be made under.* This case is controlled by the decision of the court in case of *Girhard v. State, supra.*

E. V. CHAMPION and CHARLES F. MANSFIELD, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The evidence in this case shows that on the 13th day of November, A. D. 1924, the claimant, Alice Wigginton, was employed as nurse at the State hospital at Bartonville, Illinois, operated by the State of Illinois under the direct control of the Department of Public Welfare of said State.

The evidence further shows that the claimant was at the time of the accident standing upon a ladder in and at said hospital, and that without any fault upon her part and without any warning to her, a patient of said hospital, pushed, knocked and bumped the ladder from underneath the claimant, and as a result she fell a distance of practically ten feet to the floor and received a fracture of the oscalis of the left foot and other injuries.

The Attorney General, in his statement, admits that the claimant properly states the facts.

Under the Workmen's Compensation Act, the claimant would be entitled to receive the sum of $1296.00, but the amount of $237.50 which she received from the State should be deducted.

We therefore award the claimant the sum of $1058.50.

(No. 996—Claimant awarded $605.00.)

TULLY HALTERMAN, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

RESPONDEAT SUPERIOR—*State not liable for injuries sustained by its employees.* The State is not liable for injuries sustained by its employees while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* As an act of social justice and equity an award may be made an employee who is injured while in the discharge of his duty although there may be liability existing against the State.

RUSSELL E. TOWNSEND, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a case in which the claimant was, at the time of his employment, an employee of the State of Illinois. The evidence in the case is substantially as follows:

The claimant on the 7th day of December, 1925, was employed by the State of Illinois at the Illinois Southern Hospital for the Insane, at Anna, Illinois, as a laborer, and while so employed he was under the order and direction of B. H. Elkins, a steamfitter for and at said State institution. The claimant and Elkins, together with a patient employee were engaged in the rebuilding of a steam radiator; that about 9:30 o'clock on the day of injury these workmen had completed the rebuilding of the radiator, had detached same from the testing water pressure pipes used in that test; that the radiator when empty weighed about 405 pounds and when filled with water weighed about 550 pounds. The patient employe had, after making the test, tilted the radiator for the purpose of draining the water, when so tilted the radiator became overbalanced and fell over on its side to the concrete floor of the machine shop, in which these men were employed. When the claimant saw that the radiator was going to fall he attempted to catch it in order to keep it from falling on the cement floor and breaking, and in so doing claimant's right hand caught between the radiator and the concrete floor and was badly crushed, bruised and otherwise injured. That because of said injury it became necessary to amputate the first phalange and one-half of the second phalange of each of the second and third

fingers of said right hand, causing a permanent and complete loss of each of said fingers, and his hand has become permanently disfigured.

The Attorney General has filed a demurrer, which, as a matter of law, will be sustained. The Attorney General admits in his statement herein filed that, if this claimant were working for a private individual, he would be entitled to compensation under the Workmen's Compensation Act.

As a matter of law, the State would not be liable, but we believe that as a matter of equity, good conscience and social justice an award should be made. We therefore allow the claimant the sum of $605.00.

(No. 1019—Claimant awarded $3,400.00.)

PEARL L. HARDESTY, ADMINISTRATRIX OF THE ESTATE OF ELLIS HARDESTY, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

RESPONDEAT SUPERIOR—*State not liable for injuries sustained by its employees.* The State is not liable for injuries sustained by its employees while in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY. Where an employee of the State is engaged in a hazardous employment or in a dangerous place, and is injured an award may be made to him as an act of social justice and equity and such compensation fixed according to the provisions of the Workman's Compensation act.

JOHN M. PEFFERS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant's intestate, Ellis Hardesty, deceased, was employed as house father at the St. Charles School for Boys, and had been so employed since the year 1911. On February 7, 1925, six of the inmates of the school escaped and the deceased was directed by Charles E. Saushe, head farmer of the school, to go with Matthew J. Oberwis, another employee of the institution, to the Chicago & Northwestern yards in West Chicago to search for the escaped boys. The deceased and Oberwis left the institution about 7:20 in the evening, arriving at the yards near 8:00 o'clock. They made a search through box cars and wherever they thought it likely the boys might be.

As they were walking east between two of the switch tracks a freight train passed them going west, and they stepped over near the track on the north of the one the freight train was on to be out of danger from that train. Another train on the north track was backing eastward without any lights on the rear car and without giving any signals. The noise of the passing freight was so great that the approach of the train backing to the east could not be heard. This train struck the deceased, crushing his head and killing him instantly.

The deceased left claimant as his widow and left no children or descendants of children. Claimant has filed this suit for compensation on the ground that, being an employee of the State and killed in the line of his duty, it is obligatory on the State to recompense her for his death. The evidence clearly shows that part of the duties of deceased was to make a search for escaped inmates of the institution whenever directed to do so by those in authority above him, and that Saushe was one of the officials who had authority to direct him to make such searches. Saushe directed him to go to the railroad yards, a dangerous and hazardous place, and especially so in view of the weather conditions at the time. It is also clear from the evidence that the death of deceased was not caused by any negligent act of his.

The Attorney General has filed a general and special demurrer on behalf of the State, but makes no argument in support thereof and concedes that the facts as above stated are true. This court has uniformly held that the State is not liable for injuries received by its employees in the course of their employment, and the demurrer must, therefore, as a matter of law, be sustained and the claim rejected. But in cases of this kind this court has uniformly recognized the principle that, as a matter of social justice, the widow and heirs of the deceased should be recompensed by the State and that such compensation should be based upon the rules prescribed in the Workmen's Compensation Act.

At the time of his death deceased was earning $90 per month, and under the rules prescribed by the aforesaid act the maximum amount which could be paid to the claimant is $3,750.00, which sum would be paid in installments, but Section 9 of the act provides that such compensation may be paid in a lump sum, which sum shall be an amount which will equal the total sum of the probable future payments capitalized at

their present value upon the basis of interest calculated at 3% per annum with annual rests.

The court therefore recommends to the Legislature that an appropriation be made to the claimant in the sum of $3,400.00.

(No. 1020—Claimant awarded $345.00.)

CLYDE W. SOLOMON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

MILITARY SERVICE—*when award will be made.* When a member of the Illinois National Guard is injured while in active service and in the line of his duty, he is entitled to an award for the injuries sustained. (Sec. 10, Art. 16, Military & Naval Code, Rev. St. Ill. Chap. 129.)

C. D. ROGERS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The evidence in this case clearly shows that the claimant, Clyde W. Solomon, was injured while in line of duty as a member of the Illinois National Guard, on the 20th day of August, 1924, during encampment. The claimant, while in active service, received a scratch on the knuckle of the third finger of his left hand, and as a result of this injury the claimant was unable to work for a period of eleven weeks; that while working at his regular vocation he had received $25.00 per week; that he paid out in doctor's bills the sum of $40.00 and became indebted to certain doctors in the additional sum of $20.00 and for stenographer's fees for taking testimony in this case the sum of $10.00, a total of $345.00.

This case comes squarely within the Military and Naval Code, and we believe that inasmuch as the claimant lost full time for eleven weeks and paid out certain sums of money as above stated, that he is entitled to receive the amount in full. We therefore award the claimant the sum of $345.00.

(No. 1025—Claim denied.)

CLIFFORD DEANE SHELLABARGER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

INDEPENDENT CONTRACTOR—*State not liable for acts of.* An independent contractor in the construction of a part of the State hard roads is not an agent of the State.

RESPONDEAT SUPERIOR—*when State not liable for negligence of its employees.* The State is not liable for the negligence of its agents or employees.

RUSSELL F. MEYER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for damages caused by an automobile accident which occurred on the 30th day of April, A. D. 1925, on State Highway No. 2, about one mile and a half south of the town of Minonk in Woodford county. At the time of the accident the highway was still under construction, and was not received and taken over by the State for maintenance until December 15, 1925.

About 10:30 p. m. on the day before the accident claimant left Mattoon, Illinois, in company with Ruth Edwards. They were in a Buick coupe and were going to some town in Iowa, where they had a theatrical engagement for the next day. It was a dark night and raining, and claimant was driving about thirty miles an hour at the time of the accident, which happened about 4 o'clock in the morning. The day before the accident workmen had been building the dirt shoulders along the sides of the pavement and left dirt upon it from a fourth to a half inch deep. When claimant reached the place where this dirt was, his car skidded and turned over, throwing both of the occupants out, and damaging the car and claimant's wearing apparel. Claimant alleges that his salary was $125.00 per week, and that, as a result of the accident, he was unable to work for six weeks, and that he should be paid at that rate for the time he lost from work, amounting to $750.00; that his car was damaged $600.00, his wearing apparel $100.00, and that his past and prospective actual pecuniary loss for bodily injuries is $1000.00; for which amounts he asks to be reimbursed by the State.

The attorneys representing claimant and defendant have stipulated that the contract for the construction of the slab of concrete on and along Route No. 2 at the point where the accident occurred was awarded September 14, 1923, that the construction on said contract began on May 14, 1924, and that the contract was not finished and accepted by the State until December 15, 1925. The evidence also shows that at the time of the accident the road was under construction and that signs were posted in plain view reading, "Road under construction, travel at your own risk," and "Men working."

Section 12 of the Bond Issue Act provides that the public highways upon which such roads are being constructed shall, during the construction period and continuously thereafter be under the jurisdiction and control of the Department of Public Works and Buildings, but the duty of maintaining such highways shall rest on the local authorities until such construction work has been completed. Route No. 2 at the point of the accident was under construction at the time these injuries and damages were received and had not been accepted by the Department of Public Works and Buildings, but was still under the jurisdiction of the local road authorities of Woodford county.

The Attorney General has filed a general and special demurrer to the declaration, and contends the State is not liable for the damages suffered by claimant.

The road in question was not being constructed by the agents of the State, but by an independent contractor. But even if the contractor could be held to be an agent of the State, that would not make the State liable, for it is well settled that the principle of *respondeat superior* does not apply to the State.

The Supreme Court of this State has repeatedly held that towns and counties are not liable for damages caused by the negligence of the agents and officials of such municipalities in constructing and maintaining roads. The reason is that such municipalities are sub-divisions of the State for governmental purposes. Upon the same principle the State, being the whole body of people organized for governmental purposes, is not liable for such damages. (*Dunning* v. *State,* No. 806, decided this term.)

We are of the opinion that the State is not liable in this case, and the demurrer will be sustained and case dismissed.

(No. 1026—Claim denied.)

RUTH EDWARDS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

RESPONDEAT SUPERIOR—*when State not liable.* This case is controlled by the decision of the court in *Shellabarger* v. *State, supra.*

RUSSELL F. MEYER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for $3000.00 damages caused by an accident which occurred April 30, 1925, on State Highway No. 2 near Minonk in Woodford county.

The facts in this case are the same as in the case of *Clifford Deane Shellabarger* v. *The State of Illinois*, No. 1025, and the decision of the court in this case will be the same as in that one.

The demurrer will be sustained, the claim disallowed and case dismissed.

(No. 1040—Claim denied.)

HENRY J. HEISS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

RESPONDEAT SUPERIOR—*doctrine of not applicable to State.* The doctrine of *Respondeat Superior* is not applicable to the State and it is not liable for the negligence of its employees, servants or officers.

GOVERNMENTAL FUNCTION—*State not liable.* The State in the construction of its hard roads exercises a governmental function and is not liable for the negligence of its officers, agents or officials.

CARL E. SHELDON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $1164.95 damages to the claimant's automobile caused by an accident which happened near Henkel February 6, 1926, while claimant's son, Henry, aged 17 years, and four other boys were driving to Mendota on State Highway No. 2 to attend a high school basketball game.

At the point where the accident occurred a gap had been left in the pavement for the construction of a proposed viaduct over the Illinois Central Railroad. Counsel for claimant and defendant stipulated that the accident occurred about 25 feet beyond the end of the pavement on Route No. 2, seven-tenths of a mile north of Henkel, just north of the overhead bridge; that about one-tenth of a mile north of the end of the pavement and on the side thereof was an octagonal sign bearing the inscription "End of pavement—Danger"; that within about 75 feet north of the end of the pavement there were two more signs adjacent thereto, one of which bore the inscription "Pavement gap, proposed overhead I. C. R. R.," and the other of which bore the inscription "Slow 400 feet." That each and all of said signs were in their present respective locations at the time of the accident on February 6, 1926. It also appears from the record that at the end of the pavement there was a dirt road leading south and a little west into Henkel.

Claimant lives at Sterling. On the evening of the accident his son and four other boys left Sterling for Mendota in claimant's Hudson seven-passenger touring car. Claimant's son was driving the car, one of the boys being in the front seat with him and the other three in the rear seat. The evidence shows he drove between 30 and 35 miles per hour all the way from Sterling and until he came near the end of the pavement, when he saw the sign, "End of pavement—Dangerous," and slowed the speed to between 25 and 30 miles per hour. Instead of following the dirt road south and west, he turned south and east and ran into an earth embankment and wrecked the car. The accident occurred about eight o'clock in the evening. He had dimmed the lights about a mile back from the place where the accident happened. He testified he only saw the sign, "End of pavement—Dangerous," but the boy in the seat with him saw all of the signs, and there was nothing to keep Henry from seeing them, had he been watching.

The Attorney General has filed a general and special demurrer to the declaration and contends the State is not liable for the damages claimed.

The agents of the State had put up proper signs and warnings to the public to prevent accidents at the place where this one occurred, and if claimant's son had heeded these signs, the accident would not have happened. But even if the agents of the State had not put up the proper signs, that would not

make the State liable, for it is well settled that the principle of *respondeat superior* does not apply to the State. Claimant has cited many cases holding cities and villages liable for injuries caused by permitting streets and sidewalks to become unsafe for public travel, and seems to take the view that the same rule applies to the State. In this claimant is in error. Neither the State nor any sub-division thereof for governmental purposes is liable for damages caused by the negligence of its agents, servants or officials. The Supreme Court of this State has held, in a long line of decisions, that towns and counties are not liable for damages caused by the negligence of the agents and officials of such municipalities in constructing and maintaining roads. The reason is that such municipalities are sub-divisions of the State for governmental purposes. And if a sub-division of the State is not liable for such damages, it follows, as a matter of course, that the State is not.

The demurrer will be sustained, the claim refused and the case dismissed.

(No. 1041—Claimant awarded $216.23.)

W. J. POTTER AND A. M. POTTER, PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF POTTER BROTHERS, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

PROPERTY DAMAGE—*reimbursement. When may be made.* Claimant in this case permitted the use of their scales to weigh a truck, at the request of a State Automobile Investigator, in order for the investigator to determine whether the State law was being violated, whereupon the scales were broken beyond repair: *Held.* Claimant entitled to an award for the damage to the scales.

W. A. BLODGETT, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears from the files in this case that Emerson Fellows, a State automobile investigator, working under the direction of the Secretary of State's office, found a truck on the streets of Morrison, Illinois, which he considered overloaded and,

consequently, he ordered the driver of the truck to drive on the scales of claimants for the purpose of weighing the truck and load. It appears also that claimant, Albert M. Potter, was afraid the truck and load was too heavy for the scales and testified and stated that it would break down the scales, and that Mr. Fellows stated that it wouldn't, although that statement by Mr. Fellows is contradicted. However, there appears to be no question about the truck being driven on the scales and breaking them down beyond repair. It is the opinion of this court that there is a possible question of fact in this case, as it appears that both claimant and Mr. Fellows should be men of good judgment as to weight of trucks and loads and the capacity of scales. There is also another question as to whether or not the scales were in reasonable repair so that it would stand its weighing capacity. However, the scales were broken, as it appears, beyond repair. The attempted weighing was done to determine whether or not a law of the State of Illinois was violated, and it is not reasonable to conclude that the automobile investigator had good reason to believe that the scale would not stand the weight of a truck loaded as shown.

The court is of the opinion, however, that it would not be proper to allow the price of a new scale in face of the fact that the one damaged was in use twelve or thirteen years, and we are of the opinion that the amount suggested by the Attorney General as an allowance, if an allowance was made, namely, $216.23, would be as large an amount as should be allowed.

Therefore it is recommended that claimant be allowed the sum of $216.23.

(No. 1117—Claimant awarded $1,500.00.)

TONY BLASI, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

FEES & SALARIES—*when award will be made.* Where an appropriation has been made by the Legislature providing for an increase in the salary of a State employee, and award may be made to him for the amount of the increase where he appears to be entitled to it.

HARRY SMITZ, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

Tony Blasi presents a claim against the State on account of a deficiency in salary allotted to the chief inspector in the

Division of Private Employment Agencies, in the Department of Labor, for deputy hire, said claimant being a deputy in said service. It appears that the General Assembly in making the appropriation for the salaries in question did not take into consideration that the law enacted contains a provision as follows: "If the deputy inspector has served or hereafter serves more than one year, $100 shall be added to his salary for each year of service until a maximum salary of $3,000 is reached," and that no allowance for such increase in salary is made in the law.

The Attorney General of the State of Illinois has filed a demurrer, which is sustained, as a matter of law.

George B. Arnold, director of labor of the State of Illinois, has recommended that this deficiency be awarded to the employee.

We accordingly award to the claimant the sum of $1,500.00.

(No. 1118—Claimant awarded $1,500.00.)

HECTOR DURANTE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

FEES & SALARIES—*when award will be made.* This case is controlled by the decision of the court in the case of *Blasi* v. *State, supra.*

HARRY SMITZ, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

Hector Durante presents a claim against the State on account of a deficiency in salary allotted to the Chief Inspector in the Division of Private Employment Agencies, in the Department of Labor, for deputy hire, said claimant being a deputy in said service. It appears that the General Assembly in making the appropriation for the salaries in question, did not take into consideration that the law enacted contains a provision as follows: "If the deputy inspector has served or hereafter serves more than one year, $100 shall be added to his salary for each year of service until a maximum salary of $3,000 is reached," and that no allowance for such increase in salary is made in the law.

The Attorney General of the State of Illinois has filed a demurrer, which is sustained, as a matter of law.

George B. Arnold, director of labor of the State of Illinois, has recommended that this deficiency be awarded to the employee.

We accordingly award to the claimant the sum of $1,500.00.

(No. 1119—Claimant awarded $1,500.00.)

MARTIN CANNON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

FEES & SALARIES—*when award may be made.* This case is controlled by the decision of the court in *Blasi* v. *State, supra.*

HARRY SMITZ, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

Martin Cannon presents a claim against the State on account of a deficiency in salary, allotted to the chief inspector in the Division of Private Employment Agencies in the Department of Labor, for deputy hire, said claimant being a deputy in said service. It appears that the General Assembly in making the appropriation for the salaries in question, did not take into consideration that the law enacted contains a provision as follows: "If the deputy inspector has served or hereafter serves more than one year, $100 shall be added to his salary for each year of service until a maximum salary of $3,000 is reached," and that no allowance for such increase in salary is made in the law.

The Attorney General of the State of Illinois has filed a demurrer, which is sustained as a matter of law.

George B. Arnold, Director of Labor of the State of Illinois, has recommended that this deficiency be awarded to the employee.

We accordingly award to the claimant the sum of $1,500.00.

(No. 1120—Claimant awarded $1,150.00.)

THOMAS BOUCHIER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

FEES & SALARIES—*when award will be made.* This case is controlled by the decision of the court in *Blasi* v. *State, supra.*

HARRY SMITZ, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

Thomas Bouchier presents a claim against the State on account of a deficiency in salary, allotted to the chief inspector in the Division of Private Employment Agencies, in the Department of Labor, for deputy hire, said claimant being a deputy in said service. It appears that the General Assembly in making the appropriation for the salaries in question, did not take into consideration that the law enacted contains a provision as follows: "If the deputy inspector has served or hereafter serves more than one year, $100 shall be added to his salary for each year of service until a maximum salary of $3,000 is reached," and that no allowance for such increase in salary is made in the law.

The Attorney General of the State of Illinois has filed a demurrer, which is sustained, as a matter of law.

George B. Arnold, Director of Labor of the State of Illinois, has recommended that this deficiency be awarded to the employee.

We accordingly award to the claimant the sum of $1,150.00.

(No. 1121—Claimant awarded $1,150.00.)

LOUIS J. STRELITSKY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

FEES & SALARIES—*when award will be made.* This case is controlled by the decision of the court in *Blasi* v. *State, supra.*

HARRY SMITZ, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

Louis J. Strelitsky presents a claim against the State on account of a deficiency in salary, allotted to the chief inspector

in the Division of Private Employment Agencies, in the Department of Labor, for deputy hire, said claimant being a deputy in said service. It appears that the General Assembly in making the appropriation for the salaries in question, did not take into consideration that the law enacted contains a provision as follows: "If the deputy inspector has served or hereafter serves more than one year, $100 shall be added to his salary for each year of service until a maximum salary of $3,000 is reached," and that no allowance for such increase in salary is made in the law.

The Attorney General of the State of Illinois has filed a demurrer, which is sustained, as a matter of law.

George B. Arnold, Director of Labor of the State of Illinois, has recommended that this deficiency be awarded to the employee.

We accordingly award to the claimant the sum of $1,150.00.

(No. 1122—Claimant awarded $550.00.)

FRED W. BUSSE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

FEES & SALARIES—*when award will be made.* This case is controlled by the decision of the court in *Blasi v. State, supra.*

HARRY SMITZ, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

Fred W. Busse presents a claim against the State on account of a deficiency in salary, allotted to the chief inspector in the division of Private Employment Agencies, in the Department of Labor, for deputy hire, said claimant being a deputy in said service. It appears that the General Assembly in making the appropriation for the salaries in question, did not take into consideration that the law enacted contains a provision as follows: "If the deputy inspector has served or hereafter serves more than one year, $100 shall be added to his salary for each year of service until a maximum salary of $3,000 is reached," and that no allowance for such increase in salary is made in the law.

The Attorney General of the State of Illinois has filed a demurrer, which is sustained, as a matter of law.

George B. Arnold, Director of Labor of the State of Illinois, has recommended that this deficiency be awarded to the employee.

We accordingly award to the claimant the sum of $550.00.

(No. 1123—Claimant awarded $550.00.)

FRED L. HUCHBERGER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

FEES & SALARIES—*when award will be made.* This case is controlled by the decision of the court in *Blast* v. *State, supra.*

HARRY SMITZ, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

Fred L. Huchberger presents a claim against the State on account of a deficiency in salary, allotted to the chief inspector in the Division of Private Employment Agencies, in the Department of Labor, for deputy hire, said claimant being a deputy in said service. It appears that the general assembly in making the appropriation for the salaries in question, did not take into consideration that the law enacted contains a provision as follows: "If the deputy inspector has served or hereafter serves more than one year, $100 shall be added to his salary for each year of service until a maximum salary of $3,000 is reached," and that no allowance for such increase in salary is made in the law.

The Attorney General of the State of Illinois has filed a demurrer, which is sustained, as a matter of law.

George B. Arnold, Director of Labor of the State of Illinois, has recommended that this deficiency be awarded to the employee.

We accordingly award to the claimant the sum of $550.00.

(No. 1124—Claimant awarded $400.00.)

WILLIAM M. ROSSELL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

FEES & SALARIES—*when award will be made.* This case is controlled by the decision of the court in *Blasi* v. *State, supra.*

HARRY SMITZ, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

William M. Rossell presents a claim against the State on account of a deficiency in salary, allotted to the chief inspector in the Division of Private Employment Agencies, in the Department of Labor for deputy hire, said claimant being a deputy in said service. It appears that the General Assembly in making the appropriation for the salaries in question, did not take into consideration that the law enacted contains a provision as follows: "If the deputy inspector has served or hereafter serves more than one year, $100 shall be added to his salary for each year of service until a maximum salary of $3000 is reached," and that no allowance for such increase in salary is made in the law.

The Attorney General of the State of Illinois has filed a demurrer, which is sustained, as a matter of law.

George B. Arnold, Director of Labor of the State of Illinois, has recommended that this deficiency be awarded to the employee.

We accordingly award to the claimant the sum of $400.00.

(No. 1125—Claimant awarded $41.66.)

FRANK E. ARKUSZEWSKI, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

FEES & SALARIES—*when award will be made.* This case is controlled by the decision of the court in *Blasi* v. *State, supra.*

HARRY SMITZ, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

Frank E. Arkuszewski presents a claim against the State on account of a deficiency in salary, allotted to the chief in-

spector in the Division of Private Employment Agencies in the Department of Labor for deputy hire, said claimant being a deputy in said service. It appears that the General Assembly in making the appropriation for the salaries in question, did not take into consideration that the law enacted contains a provision as follows: "If the deputy inspector has served or hereafter serves more than one year, $100 shall be added to his salary for each year of service until a maximum salary of $3,000 is reached," and that no allowance for such increase in salary is made in the law.

The Attorney General of the State of Illinois has filed a demurrer, which is sustained, as a matter of law.

George B. Arnold, Director of Labor of the State of Illinois, has recommended that this deficiency be awarded to the employee.

We accordingly award to the claimant the sum of $41.66.

(No. 948—Claim denied.)

E-Z OPENER BAG COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 20, 1927.

FRANCHISE TAX—*when court without jurisdiction to refund.* Where the claimant has an adequate remedy at law in a court of general jurisdiction to recover the tax paid by mistake, the court will not take jurisdiction of his claim.

McDAVID & MONROE, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for a refund of franchise tax in excess of that which should have been paid and which was paid under a mistake of fact as contended by the claimant. It appears to the court that the essence of claimant's contention arose through the fact that certain questions were not answered and certain other questions were improperly answered in an annual report filed with the Secretary of State by claimant on February 17, 1925. It would further appear to the court that if the questions in said report were fully and properly

answered by the claimant that the error complained of would not have occurred. It would appear that a mistake cannot be properly chargeable to the Secretary of State in the view of the fact that the report did not disclose all that should be known according to claimant. It would seem that it is incumbent upon the claimant, a large corporation, to understand their requirements, or be properly and legally advised as to an important report of the character of the one in question.

The court has read carefully all the evidence and arguments in this case and are of the opinion that the statutes of the State of Illinois gave claimant at least 30 days after the payment of this money into the Secretary of State's hands to discover the mistake, and if necessary to enforce the adjustment of the same through the court of general jurisdiction and it further appears to this court that if the claimant pursued the legal remedies otherwise prescribed that an adjustment and determination could have been made in the Secretary of State's office.

It has been heretofore frequently announced by this court that where a claimant had a legal remedy and failed to follow same that this court would not take jurisdiction.

Therefore it is recommended by this court that said claim be disallowed.

(No. 1034—Claimant awarded $1,417.50.)

W. T. GREIG, Claimant, *vs*, STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

MILITARY SERVICE—*when award may be made.* Although claimant may not be entitled to an award as a matter of law, yet where he is injured while in the line of his duty, the court may on ground of equity and good conscience allow him an award, and the award fixed according to the provisions of the Workmen's Compensation act.

PUTTING & LINDGREN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a proceeding by William T. Greig to recover an award for personal injuries received by him on August 23, 1925, at Camp Grant, Illinois, in the line of duty, under the direction of the commander-in-chief of the Illinois National

Guard, in which he was an enlisted soldier in the 124th Field Artilley. The declaration filed by claimant alleges that on said date, the 124th Field Artillery of the Illinois National Guard, were holding mounting events, and the claimant was entered in one riding event; that during the running of this event the horse which claimant was riding became fractious and about one hundred yards after the start of the race claimant discovered that he was riding with one stirrup off; that he tried to control the horse, but without any result, and that he was thrown to the ground and the horse stepped on his left ankle; that immediately after the accident Major W. J. Swift, a medical officer of the 124th Field Artillery of the Illinois National Guard attended claimant and had him removed to the St. Anthony's Hospital at Rockford, Illinois; that Major W. J. Swift's report and that of the medical board of the Illinois National Guard indicates that claimant received the injuries in the line of duty as an enlisted man in the Illinois National Guard, and a statement of Dr. J. G. Meyers of Springfield, Illinois, who examined claimant on February 21, 1927, states that the use of the foot and ankle has been reduced from 75% to 85%. Claimant testified that ever since the date of the injury this ankle has caused him much pain; that he went to Mayo Brothers at Rochester, Minnesota, for an examination of this injury, and to see if he could get some relief from the pain which this injury causes him; that they were unable to do anything for him; that claimant is a single man, and at the time of his injuries his only source of income was from the Illinois National Guard; that he received about $140.00 per month and contributed to the support of his father, mother and sister, with whom he made his home.

The State of Illinois, by the Attorney General, filed a demurrer to the declaration, which, as a matter of law, is sustained. Section 143, of Chapter 129, Article 16, of Smith-Hurd's Illinois Revised Statutes, 1925, provides that the Court of Claims shall act on and adjust compensation for officers or enlisted men of the National Guard who shall be injured, wounded or killed while performing his duty as an officer or enlisted man in pursuance of orders from the commander-in-chief. While we do not concede any legal liability on the part of the State of Illinois, in equity and good conscience, we award claimant compensation which he would be entitled to under the Workmen's Compensation Act of the

State of Illinois, as provided in Section 14d, No. 145, Chapter 48, Smith-Hurd Revised Statutes, 1925, basing claim on 75% permanent injury to use of foot, or $1,417.50.

(No. 1078—Claimant awarded $1,501.50.)

DEWEY L. DANIELS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

MILITARY SERVICE—*when award may be made.* While the State may not be liable for injuries sustained by a member of the Illinois National Guard while on active duty, compensation may be awarded to him according to the provisions of the Workman's Compensation act.

BYRON M. MERRIS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

A declaration was filed by the claimant, Dewey L. Daniels, on August 31, 1926. In the declaration, claimant alleges that on and prior to September 12, 1922, he was a private in Company A, 130th Infantry, Illinois National Guard; that at that time and for some weeks prior thereto said company had been mobilized and called into active duty by the Governor of the State of Illinois to do riot and guard duty in Bloomington, Illinois, during the railroad strikes of the summer and fall of 1922; that he was on active duty with his company during such period; that on the date above mentioned, while on such duty, Sergeant M. L. Armentrout accidentally discharged his rifle, the bullet therefrom passing through the right forearm of claimant, between the ulna and radius and just below the elbow joint; that he was taken to the Brokaw Hospital at Bloomington, Illinois, and so remained until September 23, 1922, when his company was demobilized, and he was brought back to Decatur, Illinois, and taken to the Decatur and Macon County Hospital, where he remained until September 30, 1922; that at the time of such accident he was on active duty with such company; that prior to that mobilization, he was employed by the A. E. Staley Manufacturing Company, of Decatur, Illinois; that he was employed on the loading gang; that his duties required him to lift sacks of starch, glucose, syrup and other corn products, manufactured in said plant, the sacks weighing from 100 to 280 pounds; that since his injury he has

been unable to hold down any job or work that requires heavy lifting or continuous use of his arm; that he is right handed, and that such injury was to his right arm; that his occupation is that of laborer and requires the continual use of his arm in performing the duties of such an occupation; that at present and ever since such accident, when he lifts or performs other duties requiring the continuous use of his arm, it becomes numb and weak and he is unable to hold or grasp objects.

To the declaration, the tate of Illinois, by the Attorney General, filed a demurrer, which, as a matter of law, is sustained.

From the evidence, it appears that there is a 50% disability. Under Paragraph 13, Section 145, Chapter 48, Smith-Hurd's Revised Statutes, 1925, page 1275, it is provided "for the loss of an arm or the permanent and complete loss of its use, 50% of the average weekly wage during 220 weeks." This court has made a practice of allowing just claims, basing compensation under the provisions of the Workmen's Compensation Act. Figuring a 50% disability of the use of the arm, claimant is entitled to, and we award him, the sum of $1,501.50.

(No. 1084—Claimant awarded $3,200.00.)

AMOS L. LAWRENCE, ADMINISTRATOR OF THE ESTATE OF WILLIAM LAWRENCE, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

GOVERNMENTAL FUNCTION—*when State not liable. Hard roads.* The State in constructing its hard road system exercises a governmental function and is not liable for injuries sustained by its employees thereon while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* An award may be made to an injured employee of the State who is injured in the discharge of his duty, and compensation fixed under the provisions of the Workman's Compensation act.

ISAAC K. LEVY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed by Amos L. Lawrence, administrator of the estate of William Lawrence, deceased, on September 8, 1926, alleges that one William Lawrence, on July 27, 1926, and

prior thereto was engaged in the construction of a certain durable hard surfaced public road with State equipment, and by day labor on State Bond Issue Route 13, in the county of Jackson, in the State of Illinois, about five and one-half miles north of Murphysboro, Illinois, near a station on the Illinois Central Railroad called Finney, employed by the State of Illinois, by its Department of Public Works and Buildings, and that on said date and for a long time prior thereto the said State of Illinois was possessed of and using and operating an automobile truck equipped with a dump body known as Truck No. 7, in doing the said road work; that said William Lawrence was employed by the defendant, under said Department of Public Works and Buildings, as driver of said truck and was on said date driving the truck in doing road work; that the truck and steering gear, brakes and front axle of said truck were defective, unsafe and out of repair, which was known by defendant, or could have been known by it by the exercise of due and ordinary care, and that on account of the unsafe condition of the truck, it was unsafe and dangerous to the driver and to the employees of the State of Illinois, engaged in said road work; that said William Lawrence, while driving said truck, and while in the exercise of due care and caution for his own safety, the truck on account of its defective condition, turned over and threw William Lawrence upon the ground, and that he was thereby then and there killed; that said William Lawrence, at the time of his death, was 22 years of age, was unmarried, and left surviving him Amos L. Lawrence, his father; Lucy Lawrence, his mother; Edith Leslie, his sister; Earl Lawrence, his brother; Ellen Boston, his sister; Joseph Lawrence, his brother; Thelma Tobinson, his sister; Kenneth Lawrence, his brother, and Mary Lawrence, his sister, and next of kin, all of whom are living; that Joseph Lawrence is of the age of 18 years, and that Kenneth Lawrence is of the age of 11 years and that Mary Lawrence is of the age of 8 years; that William Lawrence in his lifetime contributed to the support of his father, mother and minor brothers and sister; that said William Lawrence received as wages the sum of $4.00 per day, for his services as truck driver, and that he earned an average wage of $4.00 per day during the year preceding his death. It appears that Amos L. Lawrence, father of the deceased, was appointed administrator of the estate of said deceased. It is stipulated that 200 working days should be used for the basis of the year's work,

in accordance with Item (e) of Paragraph 10 of the Workmen's Compensation Law, in order to determine the amount due claimant.

A demurrer was filed to the declaration by the Attorney General of the State of Illinois, which, as a matter of law, is sustained.

While we do not concede any liability on the part of the State on account of injuries to persons employed by any department of the State, in equity and good conscience, we award to claimant in this case the compensation provided under the Workmen's Compensation Act of the State of Illinois, or $3,200.00.

(No. 1085—Claimant awarded $1,300.00.)

FRANK McINTURFF, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

GOVERNMENTAL FUNCTION—*Elgin State Hospital. When State not liable for injury to employee.* The State in conducting its State hospital exercises a governmental function and is not liable for injuries sustained by its employees therein while in the discharge of their duty.

ASSUMPTION OF RISK—*when employee assumes risk.* An attendant at the State Hospital for the Insane assumes all the risk or hazards incident to such employment.

SOCIAL JUSTICE AND EQUITY—*award may be made.* Where claimant is employed in a hazardous employment the court may as a matter of social justice and equity recommend an award.

THOMAS A. MURPHY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed as an attendant at the Elgin State Hospital at Elgin. On July 20, 1924, while on duty, he was attacked by a patient and his left leg broken above the knee. A physician at the hospital reduced the fracture and gave him all necessary medical attention. He remained at the hospital from the time he was injured until April 12, 1925, during which time he received all necessary nursing and medical attention. On July 2, 1925, he again went to work at the hospital, and so far as the record discloses was still employed there when the evidence in the case was taken. As a result of

the injury, his left leg is two inches shorter than the other one. Claimant's salary was $45.00 per month and his board and room furnished. He was paid his salary up to August 20, 1924, and was given his room and board up to April 12, 1925, which was valued at $24.00 per month. He was not required to pay any hospital bills, nurse bills, medical bills, board of lodging from the time of his injury to April 12, 1925, all these having been furnished by the State.

The claim is filed on the theory that the Workmen's Compensation Act applies to the State in its conduct of the Elgin State Hospital, and claimant asks that his compensation be fixed by this court under the provisions of that act.

We cannot agree with claimant that his claim comes under the provisions of the Workmen's Compensation Act. The Elgin State Hospital does not come within any of the classes mentioned in Section 3 of that act. This court has repeatedly held that the State, in conducting State charitable institutions, is exercising a governmental function and is not liable for injuries received by employees of such institutions.

In accepting employment as an attendant at the hospital claimant assumed all the risks and hazards of such employment, and there is no liability on the part of the State to pay him for the injuries received or for loss of time on account of them.

The demurrer of the State will be sustained, the claim rejected and the cause dismissed.

If the legislature sees fit to make an appropriation for the benefit of claimant, as a matter of social justice, we would recommend that it appropriate not to exceed the sum of $1,300.00 for that purpose.

(No. 1094—Claimant awarded $4,100.00.)

WILLIAM L. FISCHER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

WORKMEN'S COMPENSATION ACT—*award may be made to State employee under.* Where an employee of the State sustains an injury arising out of and in the course of his employment, compensation may be awarded to him under the provisions of the Workmen's Compensation act.

OSCAR J. PUTTING, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears from claimant's declaration that on or about the 19th day of October, A. D. 1925, he was working for the State of Illinois as a plumber and steam-fitter's helper on a section of the service tunnel at the Elgin State Hospital; that at the time in question he was ordered by the foreman, an employee of the State of Illinois, to inspect a six inch high pressure steam pipe line which had been made in a tunnel. The tunnel walls were complete and while claimant, together with others, was in the tunnel endeavoring to straighten the pipes, the walls caved in and the claimant was crushed by the falling of cement blocks and pipes. He was painfully and seriously injured, his pelvis having been broken and fractured in six places. The claimant was a man of about 33 years of age and in good health at the time of the accident, and it is further alleged that the claimant is suffering with a permanent deformity of the pelvis with permanent injury to his nervous system and is permanently disabled from following his occupation as a plumber and steam-fitter's helper and will continue so to be.

A stipulation was filed substantially agreeing with the facts alleged and further showing that claimant has a wife and a child 5 years of age who are depending upon him as their sole means of support and at the time of the accident he was receiving $6.00 per day. It is further stipulated that the said William L. Fischer is permanently injured and physically incapacitated to do any physical labor of any kind for the rest of his life.

It therefore appears to the court that following the rules of the Workmen's Compensation Act, which should be followed in view of the facts stipulated and shown, the claimant should have allowance measured by the Workmen's Compensation Act.

Therefore it is considered by the court and recommended that the claimant be allowed the sum of $4,100.00.

(No. 1095—Claimant awarded $140.00.)

THE PETER FOX SONS COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

CONTRACT—*State liable for supplies furnished.* The State is liable for supplies furnished by claimant to its State institution.

THE PETER FOX SONS CO., for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant furnished the Chicago State Hospital at Dunning, Illinois, upon order of those in authority, 500 pounds of chicken invoiced at 28 cents per pound, and it further appearing that the reason the bill was not paid in the regular course was owing to the fact that claimant failed to present his bill before the lapse of the fund out of which it could have been paid. It further appears that the Director of the Department of Public Welfare states that it is a just claim.

Therefore it appears to this court that this claim should be allowed and it is recommended by the court that the claimant be awarded the sum of $140.00.

(No. 1096—Claimant awarded $4,350.00.)

ETTA KLEIN, ET AL., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

GOVERNMENTAL FUNCTION—*when State not liable.* The State in conducting its State penitentiary exercises a governmental function and is not liable for injuries sustained by its employees while in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* Although no legal liability exists against the State, yet where its employee is injured while in the discharge of his duty, an award may be made to him, as a matter of social justice and equity.

MARTIN & MARTIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a case arising out of the killing of Peter N. Klein, deputy warden of Joliet penitentiary, by inmates thereof, on May 5, 1926. The declaration filed by claimants on November 17, 1926, seeks a recovery against the State by the widow and two minor children of Peter N. Klein, deceased, who came to his death on May 5, 1926, in the Solitary building at the new penitentiary as a result of injuries received at the hands of seven convicts, Torrez, Rizo, Shader, Price, Stalensky, Ron and Duchowski, inmates of the new penitentiary, while the decedent, who was an employee of the State, was engaged in the performance of his duties as deputy warden of said penitentiary. The declaration further sets forth that decedent was deputy warden for the period from February 4, 1924, to May 5, 1926, the date of his death; that under the directions of the warden, John L. Whitman, during said time he was in charge of the new penitentiary and performing many of the duties of the warden therein; that while engaged in the duty of interviewing convicts who had complaints to make, he was assaulted and killed, without any excuse or justification, by the seven convicts above mentioned, in a most cruel and brutal manner, while he was in the exercise of due care and caution for his own safety; that decedent left him surviving Etta Klein, his widow, and Donald Klein, aged 11 years on June 19, 1926, and Chelsea Klein, aged 7 years on November 20, 1925; that he left no property of any value other than his household furniture and an automobile; that his widow and children have no other property, and that his widow has no

means of earning a livelihood except by her manual labor; that decedent at his death was in good health, of the age of 47 years, and had been earning $208.33 per month, and in addition thereto was furnished with living quarters and food for himself and his family.

To the declaration, the Attorney General of the State of Illinois filed a demurrer, which is sustained, as a matter of law.

Although there is no legal liability where a State employee is injured while in the performance of his duty, in a case of this kind, we feel that in equity and good conscience the widow and minor children should receive some compensation on account of the loss of the husband and father, and we accordingly award the maximum amount provided under the Workmen's Compensation Act of the State of Illinois, or the sum of $4,350.00.

(No. 1100—Claimant awarded $500.00.)

PETER W. KEHLENBACH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

GOVERNMENTAL FUNCTION—*when State not liable.* The State in conducting its State penitentiary at Statesville, exercises a governmental function and is not liable for injuries sustained by its employees therein while in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* An award may be made to an employee who is injured while in the employment of the State, and in the discharge of his duty, as a matter of social justice and equity.

LAGGER & BLATT, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant in this case, Peter W. Kehlenbach, sets out in his declaration that he is and has been for a number of years last past, a resident citizen of the county of Will and State of Illinois; that on January 19, 1926, and for some time prior thereto, he was employed as a guard or keeper at the Illinois State Penitentiary at Statesville, and on said day was keeper of one of the cell houses at said penitentiary; that on said day and date a convict known as No. 8836 Coughington, confined

in the south cell house, suddenly and without warning attacked one J. R. Babcock, a guard in said cell house; that claimant went to the assistance of said J. R. Babcock, and he was then attacked by said Coughington and beaten about the body with a cane which the convict had seized, and cut about the body with a knife which the convict held, inflicting, among other injuries, a cut in his abdomen about seven inches long, and a cut on the throat; that he was otherwise beaten, bruised and injured by the convict and as a result thereof he was seriously and permanently injured. To the declaration, the State of Illinois, by the Attorney General, filed a demurrer, which, as a matter of law, is sustained.

It appears from the testimony of Dr. Fletcher, State physician, who had the care of the claimant, that he is not permanently disabled, and that his injuries are entirely cured. He is working as guard at the penitentiary again, and there is nothing to indicate that he does not receive the same remuneration as he did prior to his injury. However, claimant testifies that he is not able to do any heavy lifting, on account of the injury to his abdomen, and that it has become necessary for him to wear glasses, on account of injury sustained to his left eye; that he was a machinist prior to entering into the service of the State of Illinois, and that it would be impossible now for him to do the work he was formerly accustomed to perform. While we do not concede any legal liability on the part of the State of Illinois, we feel that, as a matter of social justice and equity, this claimant who was unjustifiably attacked while performing his duties, and as a result thereof sustained serious, probably permanent, injuries, is entitled to some compensation, and we award him the sum of $500.00.

(No. 1101—Claimant awarded $950.00.)

G. W. BUSH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

SOCIAL JUSTICE AND EQUITY—*when award made under rule.* While the State is not liable for injuries sustained by its employees while in the discharge of their duty, yet where claimant is engaged in a hazardous employment, and is permanently injured, the court will recommend an allowance to him for the injuries sustained.

LAGGER & BLATT, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was employed as a keeper at the Illinois State Penitentiary at Statesville, Illinois, on November 7, 1925, and for some time prior thereto; that while he was engaged in the duties of keeper at one of the cell houses at said penitentiary on said date and about 5:30 o'clock of said day, he was suddenly and unexpectedly attacked by a number of convicts in said cell house and thrown and knocked down a stairway and was beaten and bruised by the convicts; that his back became severely wrenched and the ligaments of his back torn and lacerated. From the abstract of the evidence on page 5, Dr. Fletcher, a witness who was called on behalf of claimant, testified in part as follows: "I treated him in November, 1925, for injuries received at the Statesville penitentiary. Bush was severely beaten by a number of convicts, and while he had no broken bones, yet there was discoloration over most of the entire body. The ligaments of his back were severely torn and for many months since I have seen and attended Mr. Bush for this trouble. The ligaments that were torn are in the lumbar region of the back, the small of the back. In my opinion, the injury resulting from this attack, so far as neuritis and pain is concerned, I am inclined to think is permanent. I doubt very much about Mr. Bush ever becoming entirely normal on account of more or less pains at intervals, which will lessen his efficiency. I cannot state the degree of inefficiency that will result in the use of his back, but there will be a slight degree of inefficiency due to the pain he will suffer from time to time." The evidence further dis-

closes that claimant is a man 49 years old, married and has four children. He received $125.00 per month and maintenance. It also appears by the evidence that prior to the time he took up his duties as guard at the penitentiary, he had followed the carpenter trade and was able to earn from $3.50 to $5.00 per day.

The claimant, in his declaration, alleges his damage to be $2,500.00, bue the records fail to disclose any definite claim for an amount to be admeasured by the Workmen's Compensation Act or otherwise. The Attorney General comes and defends and states that claimant should receive some award for his injury sustained.

It is the opinion of this court that the claimant was engaged in a hazardous undertaking and that he was severely and painfully injured, and that from all the evidence it appears that claimant will be more or less permanently disabled by reason of these injuries and that there should be an allowance made to recompense insofar as it is within the proper power of the defendant.

It is therefore considered, and it is recommended by this court, that the claimant be allowed the sum of $950.00.

(No. 1102—Claim denied.)

CHARLES BAXTER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

GOVERNMENTAL FUNCTION—*State not liable for injuries sustained by its employees.* **The State in conducting the Illinois State Penitentiary at Joliet exercises a governmental function and is not liable for injuries sustained by its employees while in the discharge of their duty.**

LAGGER & BLATT, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant, Charles Baxter, has filed a claim on account of injuries which he received on September 30, 1926, when he was employed as a guard or keeper at the Illinois State Penitentiary at Joliet, on that day he being in charge of what is known as the fiber shop, in which were working a large number of convicts, when he was struck by a convict by the name

of Stanley Morowski and three or four other convicts, with clubs and hammers and other weapons and was beaten about the head and body, including an injury to the bone and tissue of the left hand; that as a result thereof he was unable to work until on or about October 20, 1926, and underwent great pain and suffering, and claims that the use of his left hand was, as a result thereof, permanently impaired and that he received other permanent injuries.

To the declaration, the Attorney General of the State of Illinois has filed a demurrer, which is sustained, as a matter of law.

The evidence of Dr. Fletcher, attending physician, indicates that there are no permanent injuries. Claimant does not make any demand for loss of time or for doctor bills, and the presumption is that he was paid his regular salary while employed at the institution and given medical attention.

In view of these facts, it is our opinion that he is not entitled to any damages for the injuries as set forth in his petition.

(No. 1103—Claimant awarded $300.00.)

WILLIAM BARROWMAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

SOCIAL JUSTICE AND EQUITY—*when award may be made to State employee under rule of.* Where claimant, an employee of the State is engaged in a hazardous employment, and is injured while in the discharge of his duty, the court may enter an award to him for the injury sustained.

LAGGER & BLATT, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant alleges that he has been employed at the old penitentiary at Joliet since February 18, 1923, and was acting deputy warden on October 29, 1926, on which date he was injured in the course of his employment in the manner following, according to his statement:

On the morning of that day he superintended the removal of thirty-one prisoners from the old to the new penitentiary, they being moved in a Mack truck driven by one of the con-

victs. The petitioner, as such deputy warden, was following the truck to prevent the escape of any prisoners, he riding in and on a trailing car, a part of the time riding on the running board of the trailer, in which there were two officers. The road to the new penitentiary goes north on Collins street to Sixteenth street in Lockport, which is a straight road direct to the new penitentiary. On the road west it was necessary to climb a steep hill. While ascending the hill it became necessary for the driver of the truck to change into low gear. The gears refused to mesh and the emergency brake did not hold, so that the truck began to back down the hill towards the trailing car, and when about twenty feet from the bottom of the incline turned over on its side. The trailer, being a Paige car, also backed down, but in so doing backed out against a fence at the side of the road. The claimant was standing on the running board and the rear door on the right hand side of the car slammed onto his hand, breaking the ring finger of the right hand and pulling off the nail. The right arm below the elbow was also hurt in the muscles and tendons injured at the shoulder. It is not contended by claimant that this is a claim that could be measured by the Workmen's Compensation Act, and from the testimony it does not appear that the injuries sustained will be continuing, and it is assumed by the court that his compensation or salary has been paid by the defendant continuously as well as such medical aid as might be required. The evidence, however, discloses that a suit of clothes valued at about $60.00 was ruined on account of the accident, and that, of course, would be a loss to the claimant. It also appears that claimant suffered considerable pain and inconvenience.

It appears to the court that an allowance in this case cannot be considered under the Workmen's Compensation Act, and it would not appear that there was any permanent injury. However, it has been the practice of this court to consider claims of this type as a matter of equity and social justice, and in view of the fact that claimant was engaged in a hazardous occupation for the benefit of the defendant, and it appeared that he had done his duty faithfully and that he has suffered considerable pain and inconvenience, it is the judgment of the court that a limited award should be considered.

The court therefore recommends that claimant be awarded the sum of $300.00.

(No. 1104—Claim denied.)

WILLIAM R. REICHERT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

GOVERNMENTAL FUNCTION—*State not liable for injuries sustained by its employees.* This case is controlled by the decision of the court in case of *Baxter* v. *State, supra.*

LAGGER & BLATT, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant in this case filed his declaration on December 9, 1926, and asks an award on account of injuries sustained by him on April 16, 1926, he, being superintendent of the State Honor Farm at Statesville, stopped a team of runaway horses, driven by a convict. The horses were hitched to a hay rack, picking up loose boards about the yard near the office. The horses becoming frightened and with no one controlling them ran away and headed south towards the barn. Mr. Reichert saw the runaway and attempting to stop the team was pinned between the barn and the hay rack. Various other employees and inmates, seeing the accident, hurried up and released Mr. Reichert, who was then taken to the hospital. His injuries consisted of a fracture of the right shoulder, a laceration of the muscles and ligaments of that shoulder; two ribs on the right side were fractured, and his right arm has become somewhat disabled.

To the declaration filed, the Attorney General of the State of Illinois has filed a demurrer, which, as a matter of law, is sustained.

It appears to us that the claimant in this case unnecessarily placed himself in a position of danger. It does not appear that he has any permanent injuries, and there is no claim presented for loss of time or for medical services, so it is presumed that these have been compensated for, consequently, no award is made.

(No. 1107—Claimant awarded $17,350.75.)

RICHARD E. SCHMIDT AND HUGH M. G. GARDEN, PARTNERS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

CONTRACT—*when State liable.* Where a contract has been entered into between claimant and the State, for architectural services in the construction of its State building, and the appropriation for the construction of the building lapses before the amount due claimant under the contract is determined: *Held.* The State is liable for the balance due claimant under the contract.

WILLARD L. KING, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimants are architects and reside in the city of Chicago. On the 19th day of April, 1920, they entered into a contract with the State of Illinois to perform the necessary architectural services in the construction of the Research and Educational Hospital in Cook county. For these services they were to receive 4% of the contract price of the cost of the buildings.

It is agreed between counsel for claimants and the Attorney General that the total contracts for the buildings aggregated the sum of $2,189,303.35, upon which claimants were entitled to a fee of 4% amounting to $87,572.13; that payments have been made to claimants aggregating the sum of $70,221.38, leaving a balance due them of $17,350.75.

The appropriation for the construction of the buildings having lapsed before the total amount due claimants could be determined it became necessary for them to present their claim for the balance due them to this court for adjudication.

The Attorney General admits that claimants have proven their contract and performed the services under it, and there appears to be no reason why the amount due them should not be allowed.

The court therefore awards to claimants the sum of $17,350.75.

(No. 1133—Claimant awarded $666.67.)

WALTER F. ROHM, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

FEES & SALARIES—*when claimant entitled to award.* Where the salary of a State employee is fixed by law, and the legislature appropriates a sum of money insufficient to pay the same, he is entitled to an award of the difference between the amount fixed by law and the appropriation.

ANGERSTEIN & SCHNEIDER, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

It is admitted by the State that claimant is secretary of the Industrial Commission of Illinois, that he was duly appointed secretary May 1, 1923, and has continuously acted and fulfilled the duties of the office of secretary of the commission ever since his appointment; that up to October 31, 1924, his salary was paid at the rate of $5,000.00 per year, and since that date at the rate of $4,000.00 per year.

Section 14 of the Workmen's Compensation Act provides that the salary of the secretary of the commission shall be $5,000.00 per year.

No evidence was taken in this case. The declaration sets out the facts, and is verified by claimant. It appears that the legislature only appropriated $4,000.00 per year for the payment of the salary of claimant, which left a deficit of $666.67 on the 30th day of June, 1925, due claimant. It is for this deficit this claim is filed.

The law having fixed claimant's salary at $5,000.00 per year, it is the duty of the legislature to have made an appropriation sufficient to pay it. Not having done so, and claimant not having been paid the full amount of salary due him, it is the duty of this court to award him the amount of such deficiency.

The claimant is therefore awarded the sum of $666.67.

(No. 1135—Claimant awarded $829.50.)

IRA BOUCHER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

WORKMEN'S COMPENSATION ACT—*award may be made under to State employee.* Where an employee of the State sustains an injury while in the performance of his duty, an award may be made to compensate him under the provisions of the Workmen's Compensation act.

ISAAC K. LEVY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant was regularly employed by the State of Illinois in the Department of Public Works and Public Buildings, Division of Highways, as a truck driver and had been so employed since October 8, 1926, to the 3rd day of November, 1926. The claimant, as such truck driver on said day, November 3, 1926, was hauling material from the plant to a concrete mixer, and in the course of his employment, his truck backed off the paved roadway and turned over, caught claimant between truck and ground, fracturing and otherwise injuring his right wrist.

It appears from the evidence in the case, which is uncontradicted and admitted by the Attorney General as the facts, that the cause of said action that claimant was totally incapacitated for 32 weeks, which, according to his wages and figured under the Workmen's Compensation Act, would be $320.00, and that also claimant is entitled to one-fourth of 165 weeks at $10.00 per week for permanent loss of the use of claimant's right hand, which amounts to $412.50, and that medical and hospital services would amount to $97.00, making a total claim of $829.50.

It is therefore recommended by the court that the claimant be awarded the sum of $829.50.

(No. 1144—Claimant awarded $3,750.00.)

JOHN EDGAR BLAKEMAN, ADMINISTRATOR, OF THE ESTATE OF JESSE BLAKEMAN, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

RESPONDEAT SUPERIOR—*State not liable.* The State is not liable for injuries sustained by its employees in the performance of their duty.

EQUITY AND GOOD CONSCIENCE—*award may be made.* An award may be made, under the provisions of the Workmen's Compensation Act to an employee who is injured while in the performance of his duty.

OSCAR J. PUTTING and WALTER E. LINDGREN, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This claim comes before the Court of Claims on a declaration filed by John Edgar Blakeman, administrator of the estate of Jesse Blakeman, deceased, filed February 4, 1927, in which it is alleged that Jesse Blakeman, deceased, was working for the State of Illinois, as a plumber and steamfitter's helper, on a section of the service tunnel at the Elgin State Hospital at Elgin, Illinois, at the time in question said Jesse Blakeman, together with another workman being ordered by the foreman, an employee of the State of Illinois, to inspect a six-inch high pressure steam pipe line which had been made up in the tunnel prior to the placing of a concrete tunnel top. The tunnel walls were complete, and the cross pipes at intervals of ten feet for supporting pipe lines were all in; and the six-inch high pressure pipe was suspended in place and bolted up into straight runs. This section contained three lengths of six-inch pipes bolted together. The pipe lengths averaged twenty feet in length and 400 pounds in weight, so that this pipe line represented about 1200 pounds of weight suspended from pipe hangers. Jesse Blakeman, deceased, together with another workman were endeavoring to straighten the pipes when, without any warning and while working in said tunnel, the cement walls caved in and completely covered and crushed Jesse Blakeman and his fellow worker. Other workmen about the premises heard the call for help, and, after great difficulty, the deceased and his fellow employee were extricated from the debris by men who responded to the call for help. Deceased was immediately removed to the Elgin State Hospital for

medical attention. However, the injuries which he received were so serious and fatal that he died thirty minutes later as a result thereof, the date of the injury and death being October 19, 1925. Jesse Blakeman, deceased, at the time of his death was a minor, 20 years of age, and left surviving him his father, John Edgar Blakeman; his mother, Emma Mabel Blakeman; his sisters, Esther Gee, Verna Hays and Adeline Blakeman, and his brothers, Leonard Blakeman and John Blakeman, Jr. He not only turned in a large share of his earnings to his father and mother, but he also paid family bills, such as grocery and meat bills. The deceased received $36.00 per week as wages from the State of Illinois up to the time of his death.

To the declaration, the State of Illinois, by the Attorney General, filed a demurrer, which, as a matter of law, is sustained. In equity and good conscience, we award claimant the sum of $3,750.00, being the amount which is provided under the Workmen's Compensation Act of the State of Illinois for a claim of this nature.

(No. 1153—Claimant awarded $172.00.)

DR. J. G. MEYER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

MILITARY SERVICE—*when award may be made.* **There being no dispute as to the facts and the law in this case the court enters an award in favor of claimant for the amount of his claim.**

WILLIAM J. BUTLER, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEIMHOFF, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant is and was a regularly licensed physician practicing the profession in the city of Springfield, Illinois, on December 10, 1924, to March 31, 1925. And it further appears that Private Lewis J. Bourland while on regular and order duty, a member of Company C, 130th Infantry, Illinois National Guard, became ill with mumps and the grippe and did receive treatment from said claimant as a physician between said dates and that the amount claimed by

said claimant for such treatment is $172.00. It further appears that C. E. Black, Adjutant General, addressed a letter to the Attorney General stating "that the board found that the disability of Private Bourland was incurred in line of duty and recommended that his medical treatment be paid and that claimant was the attending physician and that his bill for such services in the sum of $172.00 has not been paid by the Military and Naval Department."

It appears to the court that said claim is just and recommended as aforesaid that it should be allowed. This court recommends that said claim be awarded in the sum of $172.00.

(No. 1156—Claimant awarded $4,000.00.)

CHICAGO TITLE & TRUST COMPANY, RECEIVER FOR THE BAUER CAB COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

LICENSE FEES—*when may be refunded.* Claimant in this case made application to the Secretary of State for 500 license plates for its taxi cabs, and before the plates were used a receiver was appointed for the company, and the plates were never used but remained in original packages, and were returned to the Secretary of State in time to be reissued by the State to other taxi cab owners and to collect fees thereon: *Held.* Claimant entitled to a refund of the license fee for the plates returned.

WINSTON, STRAWN & SHAW, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim based upon the fact that the Bauer Motor Cab Company made application on the 29th day of November, 1926, for the issuance of five hundred licenses for its taxi cabs and motor vehicles and that the said Bauer Cab Company paid to the Secretary of State of Illinois the sum of $4,000.00 for such licenses, which were subsequently issued to the said Bauer Cab Company by the said Secretary of State. It further appears that said license plates and numbers so issued by the Secretary of State were not received by the Bauer Cab Company until the 18th day of December, 1926; that said Bauer Cab Company went into the hands of a re-

ceiver and that claimant was appointed receiver and that said license plates were not installed, or were not even displayed on any of the said cabs or motor vehicles, but that all of said license plates remained in the stock rooms of the Bauer Cab Company in the original package until the time this claimant took possession of such assets with the exception of seven plates; that claimant has returned and delivered to the Secretary of State all of the said licenses, or license plates so issued to the Bauer Cab Company with the exception of the said seven plates. It is further alleged that the license plates and numbers so returned to the Secretary of State were afterwards issued by said Secretary of State on the taxi cabs and other motor vehicles and the said Secretary of State has received the fees as prescribed by law. The Secretary of State in a letter to the Attorney General makes the following statement relative to the license plates in question, "This claim has been carefully checked and it is found that the statements therein are true and that five hundred (500) licenses for 1927 were issued to the Bauer Cab Company numbered from 296,100 to 296,599. You will note there is an error in their declaration in stating plates were numbered from 296,100 to 296,499. The fee paid this office for these 500 licenses was $4,000.00 and it is recommended that the claim be allowed."

In view of the above and in view of the fact that the Bauer Cab Company or the receiver for said company received no benefit from the licenses or plates and that the plates were returned in proper time so that the Secretary of State could re-issue them together with the licenses for other cabs and collect the fees which the State of Illinois now has and enjoys, it appears to the court that the fees in question should be returned.

Therefore it is recommended that the claimant be awarded the sum of $4,000.00.

(No. 1157—Claimant awarded $486.25.)

EGYPTIAN TRANSPORTATION SYSTEM, A CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1927.

LICENSE FEE—*when refund may be made.* When a mistake is made in computing the weight of motor vehicles upon which the tax is assessed, and the tax is paid, claimant is entitled to a refund of the excess tax paid.

E. M. SPILLER, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant, the Egyptian Transportation System, a corporation, of Marion, Illinois, filed a declaration, in which they allege that for a period long preceding the dates of all matters hereinafter stated they were a corporation, created, organized and doing business under the laws of the State of Illinois, engaged in the business of transporting passengers by busses along and over certain public highways in the State of Illinois; that in accordance with Section 9a of the Motor Vehicle Law of the State of Illinois for the year 1926, said company, on July 24, 1926, paid to the Secretary of State of the State of Illinois the sum of $2,584.00, and on July 30, 1926, the sum of $12.70, making a total payment of $2,596.70; that in computing the weights of the busses owned and operated by said transportation company a mistake was made therein, and as a result of said error an excess tax in the sum of $486.25 was paid, and that there is due claimant said sum of $486.25. A demurrer was filed by the Attorney General of the State of Illinois, which, as a matter of law, is sustained.

A letter from the Secretary of State and recommendation from the Attorney General indicate that claimant is entitled to be reimbursed for this sum of money, and we accordingly award claimant the sum of $486.25.

(No. 1037—Claimant awarded $395.97.)

W. G. SUTTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 29, 1927.

FREIGHT CHARGES—*liability of State to reimburse.* There being no dispute as to the facts and law in this case the court enters an award to claimant to reimburse him for freight charges paid by him on coal furnished at request of an authorized department of the State.

ERNEST J. HENDERSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The claimant, who is the owner of a coal mine at Minonk, Illinois, on the 10th day of April, 1923, filed a bid with the Department of Public Works and Buildings, in the Division of Purchases and Supplies, of Springfield, Illinois, to furnish 15,000 tons of screenings 1½" at the mine at Minonk, Illinois. His bid was $2.00 per ton F. O. B. mine. That before submitting his bid he called the agent of the Illinois Central Railroad Company at Minonk, and also at Pontiac, Illinois, asking for the freight rate from Minonk on coal in carload lots delivered at the institution, and was informed at both places that it would be $1.04 per ton, and upon this information given him, he submitted his bid, showing that the freight rate would be $1.04 per ton, and upon his bid of $2.00 per ton F. O. B. mine he was given the contract to furnish 15,000 tons of screening 1½", to be shipped to the Illinois State Reformatory at Pontiac. The claimant shipped the coal as directed to the Illinois State Reformatory, routing the same over the Illinois Central Railroad, and in care of the C. & A. Railroad Co., for delivery at the institution, and that he paid the freight rate of $1.04 per ton to the Illinois Central Railroad Company, at Minonk, and inclosed the same in the statement to the Department of Public Works and Buildings, together with his bill for the coal, and was paid the sum of $3.04 per ton. That about two years afterwards the Illinois Central Railroad Company demanded of claimant the further sum of $395.97 for an undercharge. The rate of $1.04 paid to the Illinois Central Railroad Company was the rate from Minonk to Pontiac, and that rate did not include the rate of the C. & A. Railroad Company's rate of 67 cents per ton less $9.00 per car

which was included in the Illinois Central Railroad Company charge. The Illinois Central Railroad Company entered suit against the claimant for the undercharge of $395.97, and the claimant made an investigation and found that the rate of $1.04 did not include the C. & A. Railroad rate, and he settled the claim by paying the sum of $395.97 on the 30th day of January, 1926, to the Illinois Central Railroad Company, and files this claim to be reimbursed.

The Attorney General, on behalf of the State, first filed a general and special demurrer to the declaration, but afterwards filed a statement, including the copy of a letter from the director of the Department of Public Welfare, stating that the facts as set forth in the claimant's declaration had been investigated and found the same to be true and that the claim was just.

As it is clear, from the sworn declaration, that the claimant had paid out the sum of $395.97 and that the State has been benefited to that amount, the demurrer will be overruled and claimant is allowed an award for that amount.

(No. 1046—Claimant awarded $411.95.)

EDGAR C. GUPPY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 29, 1927.

RESPONDEAT SUPERIOR—*State not liable for injuries sustained by its employees.* The State is not liable for injjuries sustained by its employees while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* Although the State is not liable for injuries sustained by its employees in the discharge of their duty, the court may enter an award in his favor as a matter of social justice and equity.

SCHOLES, O'CONNOR & DOUGHERTY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LERCH delivered the opinion of the court:

This case comes before the Court of Claims on a declaration filed by Edgar C. Guppy, claimant, on account of personal injuries sustained on January 13, 1925, when he was in the employ of the State of Illinois in the capacity of a truck driver, attached to the Peoria State Hospital for the Insane at Bartonville, Illinois; that at the time of the injury he was in

such employment and working under the orders and directions of the chief engineer of said Peoria State hospital, who was also the supervisor of the transportation facilities of said institution; that he was repairing, or attempting to repair, the truck which he had been driving; that in order to do such repairing it was necessary to drive a nail in one of the staves of said truck, and while in the act of driving said nail, the nail flew off and struck claimant in the left eye, piercing the eyeball; that because of said injury the sight of the left eye has been greatly impaired; that necessary hospital and doctor bills incurred in the treatment of said injury amounted to the sum of $136.95. There is a discrepancy in the testimony of two physicians as to the percentage of loss of sight to the said left eye, one doctor testifying that there is a 30% loss, and another that there is an 80% loss. The testimony shows that claimant was earning $45.00 per month and his board and room.

While there is no legal liability on the part of the State to compensate claimant on account of the injury in question, we believe that equity will be done by rendering an award to claimant, and we accordingly do award claimant the sum of $136.95, necessary hospital and doctor bills, and the further sum of $275.00, figuring a 50% loss of sight to the left eye, and making the award under the provisions of the Workmen's Compensation Act of the State of Illinois, total award, $411.95.

(No. 1075—Claimant awarded $1,066.50.)

CLAUDE G. VAN HOORBEKE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 29, 1927.

WORKMEN'S COMPENSATION ACT—*award made to State employee under.* Where an employee of the State is engaged in an extra hazardous employment and is injured in the course of his employment compensation will be awarded to him for such injury sustained according to the provisions of the Workmen's Compensation Act.

HIGHWAYS—*when a structure within meaning of Workmen's Compensation Act.* Where in the construction or repair of the State hard road dangerous machinery is used in the repair or construction of the road, and claimant is injured in the course of his employment by the use of such machinery, such a highway is "a structure" within the meaning of the Workman's Compensation Act.

ROGER H. CLARK, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On October 14, 1924, claimant was employed by the State as a laborer in the maintence department of the Division of Highways. His duties consisted of patrolling the road, keeping up the shoulders, asphalting cracks in the pavement and assisting in making such repairs as were necessary. On March 26, 1926, while engaged in putting a "patch" in the pavement of State Route No. 7 near Seneca the thumb of his right hand was caught in the machinery of a concrete mixer and so bruised and lacerated as to require its amputation. He was immediately taken to a hospital at Ottawa, where he was given proper surgical attention, his thumb being amputated at the second joint. For these hospital and surgical services he paid $41.50. He was not able to do any work from the date of his injury till June 28, 1926, a period of 13 weeks. At the time of the injury his weekly wage was $27.00.

In his declaration claimant bases his claim for compensation on the provisions of the Workmen's Compensation Act. The Attorney General has filed a general and special demurrer to the declaration. We think the declaration shows a just claim against the State for part of the compensation claimed, and the demurrer will be overruled and the cause heard as if a general traverse of the declaration had been filed.

In his declaration claimant asks $135.00 for temporary total incapacity, $810.00 for the loss of his thumb, $2,000.00 for disfigurement of his hand, $41.50 paid out for medical and hospital services and $1,400.00 for delay in payment of the foregoing sums, making the total sum of $4,386.50 for which compensation is asked.

Section 3 of the Workmen's Compensation Act, as amended in 1917, recites that "the provisions of this act hereinafter following shall apply automatically and without election to the State * * * and to all employers and their employees, engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely: 1. The erection, maintaining, removing, remodeling, altering or demolishing of any structure, except as provided in sub-paragraph 8 of this section. 2. Construction, excavating or electrical work, except as provided in sub-paragraph 8 of this section." Section 5 of the same act, as amended in 1917, recites that "the term 'employee' as used in this act, shall be construed to mean: First—Every person in the service of the State * * * under appointment or contract of hire, express or implied, oral or written", etc. Section 6 of the act of 1917 creating the Court of Claims and prescribing its powers and duties provides: "The Court of Claims shall have power: * * * 6. To hear and determine the liability of the State for accidental injuries or death suffered in the course of employment by any employee of the State, such determination to be made in accordance with the rules prescribed in the act commonly called the 'Workmen's Compensation Act,' the Industrial Commission being hereby relieved of any duty relative thereto". It is manifest from these provisions of the statute that the legislature intended all employees of the State who are injured while engaged in any of the enterprises or businesses declared by the Workmen's Compensation Act to be extra hazardous, and whose injuries arose out of and in the course of their employment, should be paid the compensation provided in that act for such injury, and that the Court of Claims should have jurisdiction to determine whether the claimant is entitled to such compensation and if so the amount he should be allowed.

Claimant was injured while engaged in repairing one of the paved State highways, and his injury arose out of and in the course of his employment. We think there can be no doubt

but that such a highway is a "structure" within the meaning of section 3 of the Workmen's Compensation Act, especially when its construction or repair necessitates the use of such dangerous machinery as was being used at the time claimant was injured. It follows from these conclusions that claimant is entitled to receive such compensation as the Workmen's Compensation Act provides shall be paid for the injury he received. Section 8 of that act provides the employer shall provide the necessary medical and surgical services and pay 50% of the weekly earnings of the employee for the period of temporary total incapacity, but not less than $7.50 per week nor more than $14.00 per week. It also provides that in addition to compensation for temporary total incapacity the employer shall pay for the loss of a thumb 50% of the average weekly wage during sixty-six weeks. The evidence shows that claimant was totally incapacitated for work 13 weeks and that his weekly wage was $27.00. He is therefore entitled to receive $175.50 for such temporary total incapacity and, in addition thereto, $891.00 for the loss of his thumb, making the total amount of compensation to which he is entitled $1,066.50. We do not think he is entitled to receive the $41.50 expended for surgical and hospital services as the evidence shows that the State paid him $54.00 which was more than sufficient to reimburse him for that expense, and which in effect was a compliance with the provision requiring the employer to furnish necessary medical and surgical services. Neither is he entitled to the $2,000.00 claimed for disfigurement of his hand. Paragraph (c) of section 8 of the Workmen's Compensation Act provides: "For any serious and permanent disfigurement to the hand, head or face, the employee shall be entitled to compensation for such disfigurement * * *: Provided that no compensation shall be payable under this paragraph where compensation is payable under paragraph (d), (e) or (f) of this section". Claimant's compensation for the loss of his thumb is payable under paragraph (c) of section 8 and therefore he is not entitled to compensation for disfigurement of his hand. *(Chicago Home* v. *Industrial Com.*, 297 Ill. 386.) The legislature has seen fit to enact this provision of the law and all courts are bound by it. If it is unwise the remedy is with the legislature, not with the courts.

Claimant also asks to be awarded $1,400.00 on account of delay in the payment of the compensation to which he is entitled, and bases this demand upon section 19 of the Workmen's Compensation Act. Paragraph (k) of that section provides that where there has been any unreasonable or vexatious delay of payment, etc., the commission may award compensation additional to that otherwise payable under the act equal to 50% of the amount payable at the time of such award. Claimant's injury was received March 26, 1926. He filed his declaration August 17, 1926. The next regular term of this court was the second Tuesday of the September following. At that time claimant had not taken his testimony and did not take it until the following January. His brief was not filed until February 18th of this year. Whatever delay there has been appears to have been the result of claimant's failure to have his case ready for hearing at the regular terms of this court in September and January. There is no merit in his contention of unreasonable or vexatious delay, and no award will be allowed on that account.

It is ordered that claimant be and he is awarded the sum of $1,066.50 in full compensation for the injury sustained.

(No. 1080—Claimant awarded $3,750.00.)

MARY KORENSKI, WIDOW OF FRANK KORENSKI, ALIAS KARYNSKI, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 20, 1927.

MILITARY SERVICE—*when award may be made to injured soldier.* This case is controlled by the decision of the court in *Daniels* v. *State, supra.*

J. S. COOK and FRANK T. SHARP, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears from the records and evidence in this case that Frank Korenski, now deceased, was, on the 22nd day of July, 1922, a member of Battery E, Second Field Artillery, Illinois State Militia, and while in line of duty on said day and acting, as it appears, under orders, he was knocked off a truck and killed.

It appears further to this court that the said deceased left surviving him a widow, of whom he was the sole support, and it will further appear to the court from the statement of the Attorney General that this claim probably could have been made a consent case, but that the matter of allowance should be left to this court.

There is no legal liability on the part of the State. However, it has been the practice, as a matter of equity and good conscience, to make an allowance in this class of cases, and wherein an allowance is made in a case of this character that the measure of damage or allowance should be measured by the "Workmen's Compensation Act," and the court, following that precedent, recommends that the claimant be allowed the sum of $3,750.00.

(No. 1098—Claimant awarded $350.00.)

JOHN R. CHRISTIAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 29, 1927.

RESPONDEAT SUPERIOR—*property damage. When award may be made to State employee.* While the State is not liable to claimant for injuries sustained by him while in the discharge of his duty, yet as a matter of equity and good conscience an award may be made to him for damages to his property used by him in the course of his employment.

BENJ. F. CASSIDAY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant was employed by the State of Illinois on the 19th day of August, 1925, mowing grass and weeds along the right of way of the durable hard surface road on Route No. 4 between Elkhart and Broadwell in the county of Logan and State of Illinois, and while thus employed under the orders of superintendents, a patrolman, Luther Arney, of the Department of Public Works and Buildings, Division of Highways, was collided with from the rear by an Overland sedan automobile bearing Illinois 1925 license, purported to be owned by one J. W. Finney, of Bluffs, Illinois, and as the result of such accident the claimant alleges that he received two severe wounds on the head, cut down to the skull, severe abra-

sions and bruises on back. The mules driven by claimant were knocked down and injured about the knees and hip. The mower in which claimant was riding was completely destroyed and the harness damaged beyond repair, all of which is as alleged by claimant.

It appears that claimant was injured while acting as an employee of the State of Illinois, and, while there is no legal liability, it has been the practice of this court to follow the Workmen's Compensation Act in dealing with the employees of the State. The Attorney General of the State comes and files a demurrer, which, as a matter of law, is sustained.

It would appear to the court from the records in this case that the man driving the car that caused the injury should respond to claimant in the matter of property damaged and bear in mind the claimant's personal injuries, time lost, etc.

However, it would appear from all of the facts in the case and the matter of equity and good conscience, the claimant should recover a reasonable allowance for property damages.

Therefore, it is recommended by the court that the claimant be allowed the sum of $350.00.

(No. 1105—Claimant awarded $1,460.00.)

CARL JONES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 20, 1927.

RESPONDEAT SUPERIOR—*when State not liable. State employee.* The doctrine of *Respondeat Superior* is not applicable to the State, and it is not liable for injuries sustained by its employees while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made. Compensation act.* An award may be made to an employee of the State who is injured while in the discharge of his duty, and compensation fixed under the provisions of the Workmen's Compensation act.

OSCAR J. PUTTING and W. E. LINDGREN, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed by claimant on December 11, 1926, alleges that claimant on July 6, A. D. 1925, was an employee of the State of Illinois in the highway department at Springfield, Illinois, such employment being as a laborer at the

Illinois State Fair Grounds, which employment was under the supervision and direction of Robert Abels, foreman of laborers; that on said day and at said place, he was ordered and directed by his foreman, Robert Abels, to saw certain stakes on a rip saw, which was located at the big barn at the northeast corner of the Illinois State Fair Grounds, Springfield, Illinois; that while thus engaged in sawing stakes on said rip saw, the glove on his left hand caught in the saw, causing his left hand to be severely cut, bruised and lacerated and cutting off his first finger on said left hand; that he spent, to-wit, $300.00 endeavoring to be cured from said wounds, and he makes a claim for $2,000.00 from the State of Illinois.

The demurrer filed by the Attorney General of the State of Illinois is sustained, as a matter of law.

From the testimony, it appears that claimant sustained a total permanent loss of the thumb and index finger on his left hand. While there is no legal liability on the part of the State of Illinois to make an award on account of the injuries to claimant, as a matter of equity and social justice, we award to claimant the sum which he would be entitled to receive were he employed under the provisions of the Workmen's Compensation Act of the State of Illinois, or $200.00 hospital and doctor bills, and $1,260.00 for the total permanent loss of both thumb and index finger, or a total award of $1,460.00.

(No. 1108—Claimant awarded $1,460.00.)

JESSE H. CRANE Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 29, 1927.

RESPONDEAT SUPERIOR—*State not liable.* The State is not liable for injuries sustained by its employees while in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY—*Award may be made.* An award may be made in favor of an injured employee of the State, while in the discharge of his duty, under the provisions of the Workmen's Compensation Act.

OSCAR J. PUTTING and W. E. LINDGREN, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant, Jesse H. Crane, in his declaration filed in this court on December 17, 1926, alleges that on August 31, A. D. 1925, he was an employee of the State of Illinois, in the

highway department at Springfield, Illinois, such employment being as a laborer at the Illinois State Fair Grounds, which employment was under the supervision and direction of Robert Abels, foreman of laborers; that he was, at that time and place, ordered and directed by his said foreman, Robert Abels, to saw certain stakes on a rip saw, which was located in a frame building covered with canvas at the northeast corner of the Illinois State Fair Grounds, at Springfield, Illinois; that while he was thus engaged in sawing stakes on said rip saw his feet slipped, causing his left hand to come in contact with said saw, and, in consequence thereof, his left hand was severely cut, bruised and lacerated; that he has spent, to-wit, $300.00 in his endeavors to become healed and cured of his injuries; that at the time of the injury he had a child and his mother who were and are dependent upon him for support, and he makes a claim for an award of $2,000.00 from the State of Illinois.

To this declaration, the State of Illinois, by the Attorney General, filed a demurrer, which is sustained, as a matter of law.

It appears from the testimony that there is a total permanent loss of the thumb and index finger, and that claimant was receiving the sum of $24.00 per week.

While we do not concede that there is any legal liability on the part of the State to make an award in this case, as a matter of social justice and equity, we award claimant the sum of $1,460.00, figuring the loss under the provisions of the Workmen's Compensation Act of the State of Illinois.

(No. 1130—Claimant awarded $1,711.40.)

CHARLES A. ELLIOTT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 20, 1927.

RESPONDEAT SUPERIOR—*when State not liable.* The State is not liable for injuries sustained by its employees while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* An award may be made to an injured employee of the State, who is injured in the discharge of his duty, and compensation fixed under the provisions of the Workmen's Compensation Act.

CHIPERFIELD & CHIPERFIELD, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant, Charles A. Elliott, of Canton, Illinois, in his

declaration alleges that on May 12, 1926, while in the employ of the State of Illinois, Department of Public Works and Buildings, Division of Highways, Bureau of Maintenance, he was injured by reason of an accident which occurred while he was working on said day filling cracks with tar and sand in the hard road upon Route 9, one-fourth of a mile west of the corporate limits of the city of Canton, Fulton county, Illinois, when he was struck with great violence by an automobile traveling upon said public highway and coming from the west, and as a result of such striking and collision the claimant received a broken left leg; the muscles and ligaments of his back and hip were strained and injured and he received a great nervous shock, and thereby became lame, sick, sore and disordered; that his earnings during the preceding year were $1,500.00; that no compensation has been received from the employer on account of medical care and attendance.

To the declaration, the State of Illinois, by the Attorney General, filed a demurrer, which is sustained, as a matter of law.

While there is no legal liability on the part of the State of Illinois on account of the injury in question, on the grounds of equity and social justice, we award claimant the sum which he would be entitled to receive under the provisions of the Workmen's Compensation Act of the State of Illinois, or the sum of $1,711.40.

(No. 1136—Claimant awarded $1,800.00.)

JACOB JUDNICK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 29, 1927.

GOVERNMENTAL FUNCTION—*State Penitentiary at Stateville.* The State in conducting its State Penitentiary at Stateville exercises a governmental function and is not liable for injuries sustained by its employees therein, while in the performance of their duty.

EQUITY AND GOOD CONSCIENCE—*award may be made.* Where an employee of the State is engaged in a hazardous and dangerous employment, an award will be made to him for injuries sustained and compensation fixed according to the provisions of the Workman's Compensation Act.

JOHN L. WALKER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears from the records in this case that claimant was.

on the 5th day of May, A. D. 1926, employed as a guard at the Illinois State Penitentiary located at Statesville, Illinois. On that day he was stationed outside of the door of the deputy warden's office at said institution. On the forenoon of that day, while performing his duties as such guard, he heard a violent commotion in the reception room, or otherwise known as the deputy warden's office. He opened the door and found the deputy warden's body on the floor, the said deputy warden having been violently attacked by six convicts, who killed him. This guard immediately tried to quell the disturbance, and that he was struck over the left arm by a sharp instrument, beaten around the body and struck on the forehead with a sharp instrument by said convicts and that he was rendered unconscious. Claimant seeks to recover $2,500.00 for his injuries.

It is the opinion of this court that there is no legal liability on the part of the State. However, as a matter of equity and good conscience, it is the opinion of the court that this claim should be considered. There is no question as to the fact of claimant being injured in the course of his regular employment, and the evidence shows that he was engaged in a hazardous occupation and that he was in grave danger when he was injured from the attack of these convicts. However, this court, as a matter of precedent and statute, must follow the Workmen's Compensation Act in measuring damages. It does not appear from the evidence that there is any permanent injury other than that of nervousness, which, of course, is a serious situation if it would continue. We assume from the testimony that this condition came from a shock and it is problematical as to how long it will continue.

It is the opinion of the court that, taking into consideration all the evidence and keeping in mind the rules of the Workmen's Compensation Act, the amount asked by the claimant exceeds that amount which should be allowed in this case. However, it is the policy of the court to be fair to the employees of the State, particularly those who are engaged in dangerous employment and therefore the court recommends the allowance to claimant of $1,800.00.

(No. 1143—Claimant awarded $131.41.)

ILLINOIS BELL TELEPHONE COMPANY, A CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 29, 1927.

SERVICE—*when State liable for telephone service.* Where claimant furnishes telephone service to a department of the State, at the request of an authorized agent of the State, and the rates are the same as those charged to its regular subscribers, the State is liable for the service furnished.

HORACE A. YOUNG, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed by the claimant in this case alleges that it is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and is engaged in a general public utility telephone business in the city of Chicago and elsewhere in the State of Illinois, and is authorized by its charter so to do; that on or about October 11, 1919, the State of Illinois, by its agent, Charles J. Boyd, then general superintendent of the Illinois Free Employment Office, 116 North Dearborn street, Chicago, Illinois, and whose present address is the same (the corporate name of which was the Chicago Telephone Company), in writing requested claimant to furnish telephone service to defendant at its office at 344 East 35th street, Chicago, Illinois; that claimant did furnish such telephone service from time to time as requested by defendant, at 344 East 35th street, Chicago, Illinois, and at 417 East 35th street, Chicago, Illinois; that the rates charged defendant are its lawful rates for its patrons and subscribers in and for its Chicago exchange; that at various times defendant paid various amounts as agreed; that there is a total unpaid balance due claimant of $131.41, and that same has not been paid because the appropriation therefor was exhausted.

A consent to the allowance of said claim, by the Attorney General of the State of Illinois, same having been submitted to George B. Arnold, Director of the Department of Labor of the State of Illinois, was filed.

We accordingly award claimant the sum of $131.41.

(No. 1145—Claim denied.)

E. P. OLSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 29, 1927.

CONTRACT—*State highway. When State not liable.* Where claimant enters into a contract with the State for excavation work in constructing its State highway, and in carrying out his contract he is compelled to do extra work, the State is not liable to him for the additional expense incurred by him in the performance of his contract.

O. J. PUTTING AND WALTER E. LINDGREN, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On the 8th day of September, 1925, claimant entered into a contract with the State to do some excavating on Route 24 near the State Fair Ground. The contract contained the usual terms and provisions and was based on the usual plans and specifications adopted by the State Highway Department for excavation work on State highways. Claimant introduced the contract, plans and specifications in evidence. The State introduced no evidence but relies upon the provisions of the contract introduced by claimant. The contention of claimant is that while making the excavation he struck a very unusual earth condition of wet mucky loam or clay that did not come under either of the classifications mentioned in the plans and specifications, which caused him an additional expense of $3,724.72, and he has filed this claim for amount.

Claimant did not testify himself and has not proven by any one that he sustained any loss in doing the work. The specifications which are a part of the contract, provide for three classifications for excavation, viz.: Class A which includes clay, sand, loam, gravel and all hard material that can, in the opinion of the engineer, be reasonably plowed; all earthy matter or earth containing loose stones or boulders intermixed; all other material which does not come under Class B or Class C excavation. Class B which includes all stone and detached rock measuring less than one-half cubic yard in volume; all slate, shale, conglomerate, and like materials soft or loose enough to be removed with heavy machinery without blasting, even though blasting may be resorted to in order to expedite the work. Class C which includes all boulders

measuring one-half cubic yard and upwards; all solid or hard ledge rock in removing which it is necessary to resort to continuous drilling and blasting.

Claimant introduced the resident engineer as a witness, who testified that he was present on the job while the excavation was being done, and that the conditions found came unless Class A of the specifications. Claimant was paid in accordance with the price fixed for Class A excavation. The evidence in this case does not show any unusual conditions not covered by the plans and specifications whereby the State is liable to pay claimant an additional sum for the work done by him. Neither has claimant made any showing entitling him to consideration on the grounds of equity and social justice. He was a man of mature years who had long and varied experience in bidding on work of this character, and if he made a mistake and bid too low it was his own and not the State's fault. If claims of this character are allowed the State would never know when a contract is let what it would have to pay when the work is finished.

The claim is therefore denied and the case dismissed.

(No. 1166—Claimant awarded $300.00.)

GENEVIEVE M. FOGARTY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 29, 1927.

FEES & SALARIES—*when State liable.* Claimant is entitled to the salary fixed by an appropriation made by the General Assembly for the position.

JOSEPH L. GILL, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was employed as a statistical clerk in the Division of State Fair of the Department of Agriculture of the State of Illinois from the 1st day of July, 1923, until the 1st day of September, 1924, and it further appears that the 53rd General Assembly appropriated for the salary of this position the sum of $2,100.00 per annum, which would be at the rate of $175.00 per month, and it further appears,

without contradiction, that claimant only received $150.00 per month for the period above mentioned.

It is the opinion of this court that the legislature intended that the occupant of this position should receive $175.00 per month for this period, which would be $300.00 more than the amount paid claimant.

Therefore this court recommends that claimant be allowed the sum of $300.00.

(No. 1178—Claimant awarded $3,094.50.)

HAROLD W. NUTTALL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 20, 1927.

WORKMEN'S COMPENSATION ACT—*when award made under provision of.* Where claimant was directed by his superior officer to perform a duty on behalf of the State, and in the performance of his duty, and in the course of his employment, he is injured, he is entitled to an award based upon the provisions of the Workmen's Compensation Act.

A. C. BOHM, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant was employed by the State of Illinois on the 26th day of February, 1925, as a highway patrolman, working under the supervision and direction of the Division of Highways, and while thus employed was ordered and directed by the district engineer's office of the Division of Highways to attend a meeting to be held at Elgin, Illinois, on the 26th day of February, 1925, to be present there for a discussion and talk upon maintenance and repair of bond issue roads, to be given by the maintenance engineer of the Division of Highways of the State of Illinois.

Claimant attended said meeting in the line of his duty, and after the close of said meeting he got into his automobile and left for his home at Waukegan, Illinois. The city of Elgin, Illinois, is outside of the district assigned to this claimant.

While driving to his home at Waukegan, he collided with a street car in Elgin, Illinois, and damaged his automobile to the extent of $175.00, and in addition thereto suffered a broken jaw bone, and a broken left arm and other physical injuries.

Anklylosis developed in his left arm, and claimant has permanently lost 75% of the use of said injured arm.

It appears that claimant was injured in the course of his employment in line of duty and suffered damages while acting as an employee of the State of Illinois, and claimant is entitled to compensation, and, measuring claimant's damages under said act and from the evidence, it is recommended by the court that the claimant be allowed the sum of $3,094.50.

(No. 960—Claim denied.)

J. J. LENNON, SR., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 19, 1927
Rehearing denied May 12, 1927.

NON-LIABILITY OF STATE—*when State not liable. State highway.* The State is not liable for injuries sustained by claimant who was injured as a result of his own negligence while driving on the State highway.

HERBERT P. FOLKERS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim brought to recover damages in the sum of $7,213.20 on account of hospital bills, doctor bills, nurse's bill, bills for repairs to auto truck and to pay for help to replace claimant in his business and for loss occasioned to his business by his failure to be there. Claimant avers that on October 9th, 1923, he was traveling along a State highway, known as the Channahon road, which road runs between Morris and Joliet, Illinois; that about two miles southwest of Joliet, Illinois, is a bridge sometimes known as Brandon's bridge; that about 100 feet or so before reaching said bridge, the pavement ends, and the portion lying between the terminus of said pavement and said bridge is unpaved and in a rough and dangerous condition; that just before reaching said bridge, said highway makes a sharp right angles turn; that because of the failure of the State of Illinois to erect suitable warnings to appraise him of the dangerous condition of the road ahead, claimant lost control of his car while so driving on said road and was thrown into the ditch adjacent to said highway and sustained injuries for which above damages are claimed.

The evidence shows that claimant was driving a Dodge truck about 7:00 o'clock in the evening of October 9, 1923, along said road, at the speed of about thirty miles an hour, immediately before coming to said end of the pavement; that he was entirely familiar with the condition of the road at the place of the accident, having traveled over said road for the last 25 years. It also appears that a sign marked "Danger, end of pavement" is posted 400 feet from the end of the pavement.

We do not believe, in view of the testimony in this case, which has been carefully considered, that the State is guilty of negligence, and find that the accident was the result of the negligence of the claimant in this case.

Wherefore the demurrer filed by the Attorney General to the declaration filed in this case is sustained and the case is dismissed.

Opinion on Rehearing Filed May 12, 1927.

This case is again before the court on a petition for a rehearing. The claimant seeks to recover damages from the State of Illinois on account of hospital bills, doctor bills, nurse's bills, bills for repairs to automobile, and to pay for help to replace claimant in his business, and for loss occasioned to his business by his failure to be there. The accident occurred while claimant was traveling along a State highway, known as the Channahon road, which runs between Morris and Joliet, Illinois, at a point about two miles southwest of Joliet, Illinois. It appears that just before arriving at a bridge known as Brandon's bridge there is a sharp turn and that, according to claimant's testimony, there was no warning sign to notify him of the turn. His testimony further shows that he had traveled over this same road for 25 years, and knew of its dangerous condition, and that he was traveling at the rate of thirty miles an hour. We adhere to our former opinion that the accident was the result of the negligence of the claimant in this case, and an award is denied.

(Awarded in part; denied in part.)

WILLIE POLION, 971; MINNIE BRENT, MOTHER AND NEXT OF KIN TO DEWITT BRENT, A MINOR, 972; ANNA MCGINNIS, MOTHER AND NEXT FRIEND TO JOHN MCGINNIS, A MINOR, 973; JAMES L. COX, 974; PERCIVAL B. COFFIN, ADMINISTRATOR OF THE ESTATE OF TODD MOSELEY, Deceased, 975; PERCIVAL B. COFFIN, ADMINISTRATOR OF THE ESTATE OF ELMORE BAYNES, Deceased, 976; PERCIVAL B. COFFIN, ADMINISTRATOR OF THE ESTATE OF CHARLES WRIGHT, Deceased, 977; PERCIVAL B. COFFIN, ADMINISTRATOR, ESTATE OF DELMOS CAMPBELL, Deceased, 978; PERCIVAL B. COFFIN, ADMINISTRATOR OF THE ESTATE OF BENJAMIN ANDERSON, Deceased, 979; PERCIVAL B. COFFIN, ADMINISTRATOR, ESTATE OF HENRY WILLIAMS, 980; PERCIVAL B. COFFIN, ADMINISTRATOR, ESTATE OF HERBERT DURANT, Deceased, 981; THOMAS WATKINS, 1070, Claimants, *vs.* STATE OF ILLINOIS.

Opinion filed May 12, 1927.

MILITARY SERVICE—*when State liable for death of member of Illinois National Guard.* Where a member of the Illinois Guard is injured or killed while in the performance of his duty under orders from his superior officer, the State is liable under Sec. 143, Chap. 129, Hurd's Rev. St. 1927. (Art. 16, Sec. 11, Military & Naval Code.)

SAME—*when claimant entitled to award. Sec. 10, Art. 16, Military & Naval Code.* Where claimant is injured or disabled while in the performance of his duty so as to prevent his working at his trade or profession, or other employment he is entitled to an award pursuant to Sec. 10, Art. 16, Military & Naval Code.

SAME—*when award will not be made.* An award will not be made to an administrator for the death of his intestate where the deceased left no heirs at law or relatives dependent upon him for support.

WILL H. JOHNSON AND CHARLES J. JENKINS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The above claims numbered 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981 and 1070, respectively, are all based on injuries caused by the explosion of a trench mortar on August 24, 1925. All the injured were members of a Howitzer Company of the 8th Infantry Regiment of the Illinois National Guard at the time the injuries were received. As the evidence of the cause of the injuries is the same in all the cases they have been consolidated and will be heard as one.

On the afternoon of August 24, 1925, while the Howitzer Company of the 8th Infantry Regiment of the National Guard were engaged in target practice at Camp Grant, one of the trench mortars exploded. As a result of the explosion Todd Moseley, Elmore Baynes, Charles Wright, Delmos Campbell, Benjamin Anderson, Henry Williams and Herbert Durant lost their lives, and Willie Polion, Dewitt Brent, John McGinnis, James L. Cox and Thomas Watkins were injured. Percival B. Coffin was appointed administrator of the estates of those that were killed and has filed claims on behalf of their alleged dependents. Polion, Brent, McGinnis, Cox and Watkins have filed claims in their own behalf for their respective injuries.

At the time the injuries were received all the parties wounded or killed were members of the National Guard and were injured while performing duties pursuant to orders of their superior officers. Section 11 of Article 16 of the State Military and Naval Code provides that a member of the National Guard injured while performing his duty shall have a claim against the State for financial assistance, and that if he is killed his dependents shall have a claim for such assistance, such claims to be acted on and adjusted by the Court of Claims. Section 10 of the same article provides that a member of the National Guard "who may be wounded or disabled in any way, while on duty and lawfully performing the same, so as to prevent his working at his profession, trade or other occupation from which he gains his living, shall be entitled to be treated by an officer of the medical department detailed by the surgeon general, and to draw one-half of his active service pay, as specified in sections 3 and 4 of this article, for not to exceed thirty days of such disability, on the certificate of the attending medical officer; if still disabled at the end of thirty days, he shall be entitled to draw pay at the same rate for such period as a board of three medical officers, duly convened by order of the commander-in-chief, may determine to be right and just, but not to exceed six months, unless approved by the State Court of Claims." It thus appears that the law has fixed the amount of compensation that can be awarded to a wounded member of the National Guard at one-half his active service pay for a period not exceeding six months unless the Court of Claims shall extend the period beyond six months. The legislature having fixed the basis of com-

pensation or financial assistance at one-half the active service pay of the injured member for such time as the Court of Claims may approve, the court has no power to make any award except upon that basis. It can only order that the payments fixed by statute shall be made for such period of time as the merits of each case demand.

In the case of Willie Polion the evidence shows he was not permanently injured. He was out nothing for medical and hospital services, the State having furnished them. He was incapacitated for work for about 100 days. His pay as a member of the National Guard was $1.40 per day and his maintenance was estimated at 50 cents per day. One-half of this should have been paid to him during the period of his disability. As the payments were not made he is awarded the sum of $100.00.

In the case of Dewitt Brent the evidence shows he was severely and permanently injured. His spine was injured and his right arm is rendered useless. It is apparent that his injuries are of such a permanent nature as will materially reduce his earning capacity for a long time if not for life. His pay was $1.00 per day and maintenance which was estimated at 50 cents per day, and he should be paid one-half that amount or 75 cents per day until he becomes able to work. Claimant was only 19 years old at the time he was injured, in good health and was earning $30 per week. We therefore allow him $1,500.00.

In the case of John McGinnis the evidence shows his right foot was so injured that a portion of it had to be amputated. His pay and maintenance also amounted to $1.50 per day. He was incapacitated from work for about 15 months, during which time he was entitled to one-half pay, or 75 cents a day, which would have amounted to $750.00. We therefore allow him an award of $750.00.

Claimant James L. Cox received injuries to his right side, right lung and back. These wounds have healed but as a result of them claimant was incapacitated for work for about 15 months. His pay and maintenance amounted to $1.50 per day, one-half of which he was entitled to during the time his wounds prevented his working. He is therefore allowed the sum of $1,500.00.

Claimant Thomas Watkins was injured in the right leg and right groin and his right hand was lacerated. These injuries

kept him in the hospital about 6 months. After leaving the hospital he was confined to his home about 3 months before being able to work. All necessary medical and hospital services were furnished him by the State. His pay and maintenance also amounted to $1.50 per day. As it was 9 months before he was able to go to work he is entitled to one-half his pay and maintenance for that time which amounts to $1,000.00. Accordingly he is awarded that sum.

Todd Moseley was about 18 years old at the time of his death. He left a father, mother and one sister. His funeral expenses, including flowers and a photograph, amounted to $401.00, which were paid by his mother. Prior to his death he earned about $15.00 per week, the greater portion of which he gave to his mother to be used for the support of the family. This claim now comes within the provisions of Section 11 of Article 16 of the Military and Naval Code and we therefore allow claimant the sum of $2,000.00.

Elmore Baynes was 18 years old. He had graduated from high school the year he was killed. When not in school he worked and gave his earnings to his mother who used it for the support of the family. The family consisted of himself, his father and mother and three younger brothers. Under the law claimant is entitled to an award for the benefit of the surviving members of the family and he is accordingly allowed the sum of $2,000.00.

Deceased Charles Wright was about 26 years old and single. His mother, Anna Wright, appears to be the only member of his family surviving him. She was dependent upon him and he gave her $20.00 to $25.00 each month for her support. Claimant is therefore allowed the sum of $2,000.00 for her.

Henry Williams was 26 years of age and left surviving a widow who was dependent upon him for support. The claimant is therefore awarded the sum of $2,000.00.

It is alleged in the declarations filed on behalf of the estates of Delmos Campbell, Benjamin Anderson and Herbert Durant that each of them left a wife and mother dependent upon him for support. There is no competent evidence in the record that either of these men left a mother surviving him. Neither is there any evidence showing that either of them had a wife. In order for this court to make an award under the provisions of the Military and Naval Code based

upon the death of a member of the National Guard while in the performance of military duty, it must appear that the deceased left some relative dependent upon him for support at the time of his death. Such dependent relatives must be shown by direct and positive evidence. Mere rumor or hearsay is not sufficient. As claimant in these three cases has wholly failed to show the deceased left any relatives, the claims are disallowed, and the cases dismissed.

(No. 1033—Claimant awarded $30.00.)

A. W. HARTMAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

REIMBURSEMENT—*when award may be made.* There being no dispute as to the facts in this case, and no objection made by the State, the court enters an award in favor of claimant to reimburse him for moneys expended in the repair of his property damaged by an employee of the State.

ANNA M. MOORE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for damages on account of an automobile collision between claimant and an automobile, the property and under the direction of the Dixon State Hospital.

The claim is for the sum of $30.00 for injury to claimant's car, and, according to a letter filed by the managing officer of the Dixon State Hospital, the claimant should be reimbursed for the price of a new fender and labor in placing it.

Therefore the court recommends that the claimant be allowed the sum of $30.00.

(No. 1035—Claimant awarded $3,605.20.)

BONNER & MARSHALL BRICK CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

CONTRACT—*when State liable for material furnished.* The State is liable for material furnished it under a written contract where the contract has been performed by claimant according to the terms thereof, although the funds appropriated for the materials have become exhausted.

W. G. THON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The declaration filed by claimant alleges that it is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois; that on or about the 1st day of April, A. D. 1920, it entered into a written contract with the State of Illinois to furnish brick to the State of Illinois, in accordance with terms and prices for said brick as set forth in statement attached to and made part of said declaration; that there is due to it from the State of Illinois the sum of $3,605.20 for brick furnished to the State of Illinois, in accordance with the terms of said contract; that claimant was informed by said Department of Public Works and Buildings that the appropriation out of which its claim would have to be paid, was exhausted and that the only method whereby claimant could receive payment of its claim would be by having its claim allowed by the Court of Claims of the State of Illinois.

A demurrer was filed by the Attorney General to this declaration, which, as a matter of law, is sustained.

There is no dispute as to the major portion of this claim. As item of $580.00 is in dispute, it being contended that a certain number of brick had been rejected at the institution where shipped, and that the last carload of brick shipped would be considered a replacement of said rejections.

We do not believe that the facts in the case justify this conclusion. We accordingly award claimant the sum of $3,605.20.

(Claims denied.)

EDWARD C. HAYE, 1042; GLEN HAYE, BY HIS FATHER AND NEXT FRIEND, EDWARD C. HAYE, 1043; WILLIAM A. POULTON, 1044; GLENN FLANDERS, 1045; JOHN H. ANDERSON, 1055; THOMAS PREMOZIC, 1061; ANNA PREMOZIC, 1062; MARY PREMOZIC BY THOMAS PREMOZIC, HER FATHER AND NEXT FRIEND, 1063; Claimants, *vs.* STATE OF ILLINOIS.

Opinion filed May 12, 1927.

NON-LIABILITY OF STATE—*not liable for injuries sustained by visitor at State training ground of Militia.* One who visits the camp of training ground of the Illinois National Guard to view its maneuvers, either out of pleasure or curiosity, does so at his own risk, and the State is not liable for injuries sustained by him while on the premises.

SAME—*claimant presumed to have knowledge of risk.* Persons who visit the training ground of the Illinois National Guard are presumed to know that dangerous military movements illustrative of warfare may be carried on, and the State is not bound to protect him while he is on the grounds for his own pleasure or convenience.

SAME—*permission to enter ground imposes no legal liability or duty.* The mere permission given a visitor to enter the training ground of the Illinois National Guard to view demonstrations of the Army does not create a duty or impose an obligation on the State to provide against the danger of accident.

SAME—*licensee when State not liable for injuries sustained by.* Where claimant entered the premises without invitation but by mere permission, he cannot recover for injuries sustained by him, unless the injuries were intentionally or willfully inflicted.

SAME—*licensee has no cause of action when.* Where claimant is a mere licensee he has no right of recovery on account of an injury sustained by him through the negligence of the licensor in the place where he is permitted to enter.

SAME—*volunteer not entitled to recover.* Where claimant voluntarily and unnecessarily encounters danger he does so at his own risk.

SOCIAL JUSTICE AND EQUITY—*when award cannot be made under rule.* The court has no power to allow a claim against the State as an act of social justice and equity, unless the claim is based upon some principle of law or equity.

LARGE & RENO and FRANK M. RYAN, for claimants.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

On August 23, 1925, during the annual encampment of the Illinois National Guard at Camp Grant, a chemical warfare demonstration was carried on for the instruction of the troops.

The demonstration consisted of laying down a smoke screen in front of a column of troops that was advancing towards the screen and firing rifle grenades. The purpose of the smoke screen was to demonstrate that persons in front of it could not see what was taking place behind it. The rifle grenades were filled with phosphorus, and when they exploded the phosphorus burned, giving off a dense white smoke. The demonstration took place on the parade ground of the camp, the troops moving from the northeast to the southwest. On the left of the advancing troops, and parallel with their line of march, was a road or street which intersected another street that ran in a northerly and southerly direction across the west or southwest end of the parade ground. The smoke screen was laid down four or five hundred feet northeast of this street and at right angles with the line of march of the troops. The ground north and east of these two streets was reserved for the demonstration, and is spoken of in the testimony as the restricted area. The demonstration was under the direct supervision of Major Alfred de Roulet, who carried it out under the orders of his superior officers in the Thirty-third Division. Before the demonstration started, Major de Roulet had sentries posted around the parade ground and himself instructed them to allow no persons on the restricted area. It was the second Sunday of the encampment, and there were many people at the camp to witness the various maneuvers of the troops, the number being estimated by the witnesses from 3000 to 5000. Most of the people came in automobiles, and those who stopped to view the chemical warfare demonstration parked their cars on the sides of the parade ground. After the column of troops had moved a prearranged distance from its starting point the candles used to produce the smoke screen were ignited. They gave off a dense white smoke, through which nothing could be seen. As the troops advanced behind this smoke screen, they fired their rifle grenades. Many people, including Glenn Flanders, claimant in this case, got out of their cars and were standing in front of them to better view the maneuvers. When the smoke screen started some of the people began moving into the restricted area to get a better view. Guards and officers endeavored to keep them back and told them there was danger. While claimant was standing in front of his car watching the demonstration one of the grenades burst near him, setting his

clothing afire and burning him seriously, and he has filed this claim against the State for $10,000.00 damages.

The Attorney General filed a general and special demurrer to the declaration. Evidence has been introduced by both the claimant and the State, and the case will be heard as though a general traverse of the declaration had been filed.

It is alleged in the declaration and urged in argument that claimant was at Camp Grant at the invitation of the officials in charge of the troops, but the evidence does not sustain this contention. While the newspapers published the fact that the demonstration would take place, it was published as an item of news, the orders for all camp activities being open to inspection by all newspaper men. The demonstration was not for the instruction of the public, but for the soldiers at the encampment. It was a military demonstration that was essential for the proper training and instruction of the troops, and was given only for their benefit. The fact that the demonstration was not secret and that all persons who desired to do so were permitted to enter the camp to view it did not amount to an invitation to claimant to be present. In order to entitle claimant to the status of a person entering the camp by invitation, it must appear that his going there was of advantage to the occupants. (20 R. C. L., p. 69.) There is no such showing in the record. On the contrary, the evidence shows he was present merely for his own pleasure or curiosity. He was in no way connected with the encampment or any of its activities and was at most but a mere licensee. "The principle appears to be that invitation is to be inferred where there is a common interest or mutual advantage, while license is inferred where the object is the mere pleasure or comfort of the person using it." (*Bennett* v. *L. & N. R. R. Co.*, 102 U. S. 585.) The difference between a visitor who is on the premises of another by invitation and as a licensee is stated in our Supreme Court in *Pauckner* v. *Waken*, 231 Ill. 276, in the following language: "It will be found that the distinction between a visitor who is a mere licensee and one who is on the premises by invitation turns on the nature of the business that brings him there, rather than on the words or acts of the owner which precede his coming. Permission involves leave and license, but it gives no right. If one avail himself of permission to cross another's land, he does so by virtue of the license and not of right. The permission or license is a justification for his entry, and while he is not technically a trespasser, yet the

duty of the owner to guard him against injury is governed by the rules applicable to trespassers."

Camp Grant belongs to the State, and is maintained and used to give military instruction and training to the National Guard. Such instruction and training necessarily include dangerous military maneuvers illustrative of actual warfare. Claimant voluntarily went to the camp to view these maneuvers, either out of curiosity or for his own pleasure, and he did so at his own peril. The State was not bound to protect him or provide safeguards for him while he was on its grounds for his own pleasure or convenience. The place was one of danger—a place where a demonstration of actual warfare was to be given—and claimant went there at his own risk and enjoyed the supposed implied license subject to its attendant perils. The mere permission or license to claimant to enter the camp and view the demonstration did not create a duty or impose an obligation on the part of the State to provide against the danger of accident. (*I. C. R. R. Co.* v. *Godfrey*, 71 Ill. 500; *Wabash R. R. Co.* v. *Jones*, 163 Ill. 167.) It is well settled that the owner of the lands assumes no duty to one who is on his premises by permission only, and as a mere licensee, except that he will not wilfully and intentionally injure him. (20 R. C. L., pp. 59-69; *Hansen* v. *Cromoll*, 232 Ill. App. 485, and cases there cited.) There is no evidence in this record that claimant was wilfully or intentionally injured. On the contrary, the evidence shows that the officers in charge of the demonstration took all reasonable precautions to prevent injuries to visitors who were at the camp to view the demonstration. As claimant went on the premises without invitation, and merely by permission, he cannot recover for the injuries received unless they were wilfully or intentionally inflicted. "Where a person is a mere licensee he has no cause of action on account of an injury received through the negligence of the licensor in the place he is permitted to enter." (*Hansen* v. *Cromoll, supra.*)

If it were conceded that the injuries to claimant were the result of the negligence of the officers in charge of the demonstration, it does not follow that the State is liable for such injuries. When officers of the National Guard so conduct the military operations for the instruction and training of the troops as to menace the life or property of a citizen while on his own premises they thereby become trespassers and are not representatives of the State. (*Joos* v. *Ill. N. G.*, 257 Ill.

138.) If the State is not liable for injuries suffered by one on his own premises through the negligence of officers of the National Guard, certainly it is not liable for injuries received by one while on the training grounds of the guard for his own pleasure or convenience.

The maneuver which claimant was watching at the time he was injured was a demonstration of actual warfare. He went to the parade ground for the express purpose of seeing it. He knew, or should have known, the demonstration was dangerous, for all actual warfare demonstrations are attendant with danger. His going there to view the demonstration was a voluntary and unnecessary risk. It is well established that one who voluntarily and unnecessarily encounters danger does so at his own risk. That the smoke screen prevented the soldiers behind it from seeing those in front of it was obvious to all. It was also apparent that the soldiers began firing the rifle grenades a considerable distance back of the screen and were moving toward it firing as they came. Under such circumstances common prudence should have caused claimant to at least remain in his car, where the danger would have been less. He did not do so, but got out of it and went about 15 feet in front of it on the parade ground, where he was burned by an exploding grenade.

That there can be no recovery where the person injured was guilty of contributory negligence is so well settled that citation of authorities is unnecessary. And the fact that the negligence of the injured party was slight makes no difference—if his negligence contributed in any degree to the injury, he cannot recover. We have carefully read this record and considered the arguments urged in support of claimant's demand and have arrived at the conclusion that he is not entitled to any award.

Claimant's attorneys urge that all the persons injured at the demonstration should be compensated by the State as an act of social justice. This court has no power to allow any claim against the State unless it is based upon some principle of law or equity.

The claim is denied and cause dismissed.

It was stipulated by the Attorney General and attorneys for claimants in cases No. 1042, 1043, 1044, 1055, 1061, 1062 and 1063 that the evidence taken in this case should apply to them also insofar as it might be pertinent. As the same

reasons and principles of law apply to them as do to this case, they will each be denied and dismissed accordingly.

(No. 1049—Claimant awarded $680.63.)

ADDIE GRAVES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

RESPONDEAT SUPERIOR—*State not liable for injuries sustained by its employees.* The State is not liable for injuries sustained by its employees while in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY—*award may be made.* The court may enter an award in favor of claimant who is injured while in the discharge of his duty, and base its award upon the rules of the Workman's Compensation Act.

CARL CHOISSER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant while in the course of employment by the defendant at the Kankakee State Hospital, on December 28, 1924, fell and injured her right arm and breaking it at the wrist.

The claimant makes demand in her statement of claim for damages to the extent of $3,000.00. In the argument of her counsel it is urged that the claimant should recover $5,000.00.

As it has been frequently announced by this court in cases of this kind, there is no legal liability. It has, however, been the practice of this court in cases of this kind to consider as a matter of equity and good conscience this class of cases under the Workmen's Compensation Act. From the evidence in this case, claimant suffered about 55% of the use of her hand, and following the rules laid down in the Workmen's Compensation Act, the claimant would recover 55% of 165 weeks' salary at the rate of $7.50 per week, which would make a total as computed by the Attorney General, of $680.63. It is contended, however, by claimant that her arm and hand are stiff and useless as the result of such injuries. The claimant is a widow 55 years of age and it would appear that in the condition of her hand she would have a difficult task of earn-

ing a living, and it is alleged that she is dependent upon her own efforts or upon charity. However, the court is bound by precedent and must consider these cases on the rules of the Workmen's Compensation Act. There is a question in this case of the probability of a permanent disability in so far as claimant being able to follow her usual vocation. Therefore this court recommends taking into consideration all the facts in the case, that claimant be allowed the sum of $680.63.

(No. 1083—Claimant awarded $2,150.00.)

JESSE E. BARTLEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

SERVICES—*when State liable for legal service rendered.* Where legal services have been rendered for the State which is beneficial to it, the State is liable to pay a fair and reasonable attorney fee for such services.

JESSE E. BARTLEY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, *for respondent.*

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is an action brought by claimant for services rendered in prosecuting a certain suit against E. E. Mitchell in his official capacity of State Treasurer on an alleged breach of his official bond.

It appears that claimant was employed in a legal manner by the Attorney General of the State, and it does appear that he performed valuable services for the State, as shown by the evidence; in fact, the court has been informed and so believes that he recovered for the State of Illinois, through his efforts in the prosecution of the case against said Mitchell, the sum of $20,000.00. As a matter of fact, the State of Illinois has been benefited through the efforts of this claimant in that amount, and it is disclosed by the records that substantially all of the legal services performed in connection with this case were performed by claimant.

It appears to this court that efficient services were performed by claimant; that the defendant, the State of Illinois, was benefited in actual dollars and cents by the efforts of the claimant, and it further appears to the court that as a matter

of equity and good conscience, if not as a matter of law, and we believe there has been a legal contract between the State of Illinois and claimant for the performance of these services, and that therefore the claimant should be paid a fair and reasonable amount for the services actually rendered the people of the State of Illinois.

This court, after viewing all of the facts in the case and after diligently investigating the value of the work performed by the claimant, is of the opinion that the fair and reasonable compensation to be paid to the claimant for the services performed would be, and the court hereby recommends, that the claimant be allowed the sum of $2,150.00.

(No. 1089—Claimant awarded $300.00.)

ARCHIE BROWN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

MILITARY SERVICE—*when award may be made.* Claimant a private in Co. I, 8th Inf., Illinois National Guard was injured, while obeying orders from his superior Batallion Commander, in riding a horse he was directed to bring to his commander: *Held.* That while the State is not liable for the injury sustained compensation may be awarded according to the provisions of the Workmen's Compensation Act.

CLARENCE B. DAVIS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The declaration filed by claimant alleges that on August 1, 1926, he was a regularly enlisted member of the military force of the State of Illinois, as a private in Company I, Eighth Infantry, Illinois National Guard, and was on duty on the first day of August, 1926, at Camp Grant, Illinois, in pursuance to orders from his company commander; that on said date, while in the discharge of his regular military duties, the plaintiff was commanded by his battalion commander, Major Robert A. Byrd, to go to a certain corral and then and there take possession of a certain horse and bring the horse to the quarters of said battalion commander; that plaintiff, in discharge of his orders and duties, proceeded to the corral and was then and there given a certain horse by the officer in charge, and that

he mounted the horse, as he was ordered to do, and attempted to ride said horse to the quarters of said battalion commander; that the horse became frightened and fell to the ground while plaintiff was still on the back of the horse, and the horse in so falling fell upon plaintiff and broke his left leg; that many bones in plaintiff's foot and leg were broken and he became ill, sore, lame and disabled and so remained for a long time, and that he is permanently incapacitated.

A demurrer filed by the Attorney General of the State of Illinois is sustained, as a matter of law.

It appears from the testimony that so far as the union of the bone is concerned, that the leg is healed. One physician testifies that there is a 60% disability in the use of the member. The respondent's doctor stated that there was no permanent partial disability. Claimant is now employed by the State, as a janitor, and is receiving $100.00 per month. He is 53 years of age, and if he were compelled to go to work for an individual, he would be considerably handicapped on account of the injury sustained, and his earning power has been decreased by this disability.

While we do not concede any legal liability on the part of the State of Illinois, if he were employed under the provisions of the Workmen's Compensation Act, he would probably be allowed a reasonable sum, and, figuring a disability of 50% to the use of his left leg, he is entitled to receive, and we accordingly award to him, the sum of $300.00, figured according to the provisions of the Workmen's Compensation Act of the State of Illinois.

(No. 1090—Claimant awarded $412.00.)

RAYMOND ELLITHORPE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

HARD ROADS—*when employee entitled to award. Reimbursement.* There being no dispute as to the facts in this case the court recommends an award to claimant to reimburse him for medical service and hospital expenses incurred by him on account of injuries sustained while in the performance of his duty.

CHARLES G. SEIDEL, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant, a resident of the city of Elgin, Illinois, aged

24 years, was an employee of the State Highway Department on the 29th day of October, 1923, and for several years prior thereto, and while on said day he was engaged in his occupation as a truck driver in the reconstruction of the Higgins road in Cook county, Illinois, when he was injured, another truck striking his truck, breaking both bones in his left leg.

There appears to be no contention but that the claimant was in the employ of the State while he was operating his truck and received his injury in the course of his employment. He makes a claim including medical and hospital aid of $412.00. The Department of Public Works and Buildings in a letter to the Attorney General concedes that claimant is justly entitled to the claim of $412.00.

This court is of the opinion that the claim is reasonable and just and therefore this court recommends that claimant be allowed payment of $412.00.

(No. 1093—Claimant awarded $2,000.00.)

MARY ELIZABETH WILLIAMS BY WILLIAM TED WILLIAMS, HER NEXT FRIEND, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

RESPONDEAT SUPERIOR—*State not liable.* The State is not liable for the negligence of its employees.

SOCIAL JUSTICE AND EQUITY—*award may be made.* While the State is not liable for the negligence of its employees, yet where the injuries are sustained on account of the negligence of such employee, an award may be made to claimant as an act of social justice and equity.

B. L. KIRK, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed in this case on November 4, 1926, alleges that Mary Elizabeth Williams is a resident of the city of Urbana, Champaign county, Illinois, and that she was a resident of said county on December 14, 1925, and that she was a minor and the daughter of William Ted Williams, who is appearing for her as next friend; that on said date she was proceeding on and along Green street, a public highway in

the city of Urbana, Champaign county, Illinois, upon the sidewalk along the south side of said Green street, and that as she was proceeding upon said sidewalk along said street, with all due care and caution for her own safety, and proceeding in an easterly direction, having crossed the intersection of said Green street with Lincoln avenue in said city of Urbana, she was struck by an automobile five-ton truck, owned by the University of Illinois, and driven by A. A. Johns, who then and there was in the employ of the State of Illinois, in the occupation of hauling cinders for said University of Illinois, and that while she was so proceeding across said Lincoln avenue, said A. A. Johns drove said truck of said University of Illinois at a high rate of speed along and upon said Green street at a high and dangerous rate of speed, and did then and there turn his said automobile at such high rate of speed from said Green street, upon which he was then and there driving in an easterly direction, onto said Lincoln avenue, to proceed in a southerly direction, in such a reckless manner that he drove to and upon and collided with said Mary Elizabeth Williams, who had already proceeded across said Lincoln avenue, and struck her as she was stepping on and upon the curbing on the east side of Lincoln avenue, knocking her down to and upon the pavement, and causing severe bruises, fractures and lacerations, causing the displacement of two ribs and further derangement of her physical and nervous system, so that she has been from that time hitherto incapacitated for duties in and about her home, and has been caused to expend large amounts of money in obtaining medical attention, and has suffered great physical pains and discomfort, and claimant files claim for damages in the amount of $2,000.00.

A demurrer to this declaration was filed by the Attorney General of the State of Illinois, and, as a matter of law, the demurrer is sustained.

Considerable evidence was taken on behalf of the claimant, and from a careful consideration of same it appears that the girl was injured on account of the carelessness of A. A. Johns, a State employee. It is difficult to determine the extent of the injuries, and, inasmuch as she does not come within the provisions of the Workmen's Compensation Act, we believe that a fair compensation is all that is asked. While there is no legal liability on the part of the State of Illinois, in equity and good conscience, we award claimant the sum of $2,000.00.

(No. 1106—Claimant awarded $2,000.00.)

THOMAS JUDGE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

WORKMEN'S COMPENSATION ACT—*award made to injured employee of State.* Where an employee of the State is injured while in the performance of his duty, as a matter of social justice and equity, he may be awarded compensation for such injuries on the basis provided by the Workmen's Compensation Act.

W. E. LINDGREN and OSCAR J. PUTTING, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

It appears that the claimant was employed in the construction of hard roads north of the village of Gardner, Grundy county, Illinois, and while claimant was pouring tar and filling cracks in the concrete of said hard roads, he was struck by an automobile being driven north.

It appears that the claimant was knocked unconscious, and it appears from the evidence that the right shoulder bone and right arm were broken and three ribs on the right side of the body were fractured.

The measure of damages in this case, following precedent and law, must measure under the Workmen's Compensation Act; therefore, the only controversy before the court is as to whether or not the claimant sustained permanent total disability or compensation for the total permanent loss of the use of the right arm.

This court is of the opinion that the record would not sustain total disability, yet, as a matter of equity and good conscience, it is the desire of the court to be as liberal as consistently possible.

We are therefore of the opinion that approximately 50% of the total disability, measured by the Workmen's Compensation Act, would be a fair and adequate allowance under all the facts and circumstances in this case.

Therefore, it is recommended by the court that the claimant be allowed $2,000.00.

(No. 1110—Claimant awarded $4,000.00.)

MARY E. STOTTS, ADMINISTRATRIX OF THE ESTATE OF WILLIAM B. STOTTS, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

RESPONDEAT SUPERIOR—*State not liable.* The State is not liable for an injury sustained by its employee while in the discharge of his duty.

SOCIAL JUSTICE AND EQUITY—*award may be made. Compensation Law.* Compensation may be awarded under the provisions of the Workmen's Compensation Act, although the State is not liable for the death of an employee caused by injuries sustained in the performance of his duty.

FRED RHOADS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim brought by Mary E. Stotts, as administratrix of the estate of William B. Stotts, deceased, against the State of Illinois, on account of the death of her husband, who died as a result of an injury received by him while in the employ of the Highway Department of the Department of Public Works and Buildings, while engaged in painting a bridge on the State Highway Route No. 1, at Big Creek, about eight or ten miles south of Paris, Illinois, where Stotts, with other workmen, was standing on a scaffold swing under a bridge. The accident occurred on May 25, 1926, between 9:30 and 9:40 A. M. A ladder used as one support of the swing broke, precipitating Stotts to the ground underneath, where he struck on or between two blocks of concrete that had previously been thrown there from the roadway above resulting in what is commonly known as a broken back. Stotts, at the time of the injury, was under the direct supervision of Ross Hensley, as foreman of the painting department of the district engineers of the highway department located at Paris, Illinois, who directed and superintended his removal to the Paris Hospital, where he was given medical attention by Dr. Roland Hazen and placed in a plaster cast, where he remained until June 15, 1926, at 11:00 P. M., when he died.

At the time of his death Stotts lived with his family on a small farm about six miles east of Paris, and was working as a common laborer for the highway department whenever

they had work for him to do, and had been working about a week or ten days at the time of the accident. He was working nine hours a day and receiving 40 cents per hour and got his pay check on Saturday of each week, amounting to $21.60 weekly. At the time of his death he left surviving him Mary E. Stotts, as his widow, and one son aged 11 years. The State Highway Department of the State of Illinois have paid all of the hospital bills and nurse hire furnished to the decedent during the time between the date of his injury and the date of his death.

To the declaration filed by claimant, the State of Illinois, by the Attorney General, filed a demurrer, which is sustained as a matter of law.

Under the provisions of the Workmen's Compensation Act of the State of Illinois, the claimant is entitled to receive the sum of $4,000.00, and we accordingly award to her the sum of $4,000.00.

(No. 1128—Claimant awarded $512.92.)

E. M. SORRELLS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

REIMBURSEMENT—*when award may be made to State employee.* An employee of the State who has expended moneys for board and lodging, while in the performance of his duty, may be reimbursed by the State for moneys so expended.

ANGERSTEIN & SCHNEIDER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed in this case alleges that claimant is one of the arbitrators of the Industrial Commission of the State of Illinois, having been duly appointed as arbitrator by Honorable Len Small, Governor of the State of Illinois, and that he has since the date of his appointment qualified, acting as one of the arbitrators of the Industrial Commission of the State of Illinois; that he is a resident of the city of East St. Louis in St. Clair county, Illinois, and that his duties as arbitrator require his presence in Chicago and other cities for the purpose of hearing and determining cases, and that during the months of February, March and April, 1925, claimant made trips from East St. Louis to Chicago and

return and was by reason of his duties compelled to remain in Chicago during various periods of time, paying in said city his board and room during the time that he was required by his duties to remain there; that during the month of May, 1925, he was required in the performance of his duties to make a trip to Dixon and Galena, and during the month of June to make a trip to Cairo, Metropolis and other towns in the southern part of the State; that during the month of May he was also required to remain in Chicago for various periods of time and to make trips from Chicago to East St. Louis and that during the month of June he was also required in furtherance of his duties to be and remain in Chicago during the month of June, 1925, and to pay board and room while in said city; that he was compelled during said period of time to pay out for meals and lodging while in the city of Chicago $388.00 and for railroad fare the sum of $194.92, making a total of $512.92, and that he has not been reimbursed for same.

A demurrer filed by the Attorney General to the declaration is sustained as a matter of law.

It appears from an examination of the case that subsequently expenses of a like nature were paid to this arbitrator and other arbitrators similar to this, and that same are now being approved and paid.

We accordingly award claimant the sum of $512.92.

(No. 1132—Claimant awarded $2,500.00.)

GEORGE KATANICH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

NON-LIABILITY OF STATE—*Posse comitatus. State not liable.* The State is not liable for injuries sustained by a member of a *posse comitatus* in the apprehension of an escaped convict from its State penitentiary.

EQUITY A GOOD CONSCIENCE—*award may be made.* While the State is not liable for injuries sustained by a member of a *posse comitatus*, yet an award may be made to such member on grounds of equity and good conscience.

ROBERT E. LARKIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEEON delivered the opinion of the court:

The declaration filed in this case alleges that on May 5, 1926, Charles Shader, No. 8266; Charles Duschswski, No. 8667;

James V. Price, No. 9103; one Vernardo Roa, No. 9083; Robert Torrez, No. 9084; one Gregerio Rizo, No. 9389, and one Walter Spalesky, No. 7132, were inmates of the Illinois State Penitentiary, at Joliet, Illinois, legally confined therein by judgments of courts of competent jurisdiction, for crimes committed within the State of Illinois, and were then and there serving sentences imposed upon them and each of them by said courts for said crimes, and said convicts on said day, without any warrant or authority, committed an act of riot, killed the assistant warden of the State penitentiary, and made an unlawful escape from said penitentiary; that said convicts, after such escape, came to the village of Leonore on the same date, and at or about the same time certain policemen of, for and from the city of Streator, Illinois, in compliance with the legal duty then and there imposed upon them, began a search for said convicts, and in making such search came to said village of Leonore and entered plaintiff's place of business, a soft drink parlor, and ordered said plaintiff to join the *posse commitatus* and join in the search for said convicts; that said plaintiff then and there complied with such order and joined such *posse commitatus;* that about 10:00 o'clock p. m., of the date above mentioned, said convicts were apprehended in said village of Leonore, and an attempt to capture them was made, and while so attempting to capture said convicts, plaintiff was then and there wounded, to-wit, said convicts then and there being armed with revolvers, pistols, guns and firearms loaded with powder and leaden bullets, fired said pistols, revolvers, guns and firearms at and toward said plaintiff, while he, said plaintiff, was in the discharge of his duty as a member of said *posse commitatus;* that seven leaden bullets so fired from said firearms, as aforesaid, by force of the gunpowder aforesaid, struck plaintiff at divers places upon his body, to-wit, one of said bullets striking plaintiff in the lower right side of the abdomen and piercing through the body; one bullet striking the left side of the abdomen and passing through the body; three of said bullets striking and lodging in the left groin, and two of said bullets entering and passing through the right thigh; and plaintiff claims damages in the sum of $2,500.00.

To the declaration filed by claimant, a demurrer was filed by the Attorney General, which, as a matter of law, is sustained.

in 1921, was repealed. A new statute was passed in 1923 which provided for the holding of money paid under written letter of protest for a period of thirty days so as to enable the protesting taxpayer to bring his protest to the notice of a court of record by a proper injunction proceeding. The Attorney General has ably argued that this statute establishes a procedure for testing these questions and recovering illegal taxes in courts of record, and that this court should refuse to take jurisdiction of such claims, where the claimant might have gone into a court of record and litigated his claim there against a State officer having custody of the funds. There is a great deal to be said in favor of the argument advanced by the Attorney General, however, the payments involved in these claims were all made prior to the enactment of the statute of 1923, and his argument, therefore, has no weight in this particular case.

The second point involved in this case is a question of the right of this claimant to recover the sum of $2,335.00, which it paid as additional initial fees and which it claimed were not required to be paid by the statute, but were collected by the Secretary of State and paid by the claimant under compulsion and duress. The facts with reference to the compulsion and duress were practically identical with those we have discussed above, and we reach the same conclusion as to that point as we did above with reference to the excess annual taxes paid. There is the further defense urged by the Attorney General as to this item which is not urged as to the annual tax. The Attorney General claims that this court has no right to construe the statute of the State of Illinois and determine its meaning. In this case the Secretary of State construed the General Corporation Act to mean that wherever a corporation changed its shares from par value into no par value, even though it did not increase either expressly or actually or theoretically its authorized capital stock, nevertheless, since it did increase its shares and change them from par to no par, that the statute provided for an additional initial fee based upon authorized capital stock computed by multiplying the non par shares $100 each. The statute says quite plainly that the additional initial fee shall be assessed upon increases in the capital stock. It also says that where the company has non par stock or shares, such shares shall be considered of the par value of $100 each. This same question was before the Supreme Court of Massachusetts in the case of *Hood Rub-*

part of the fall of 1926, and that at the time of the collision it was of the value of $30.00.

A demurrer filed by the Attorney General of the State of Illinois is sustained, as a matter of law.

A letter from C. R. Miller, director of the Department of Purchases and Construction, and Frank T. Sheets, chief highway engineer, states that after a thorough investigation of the facts in connection with this accident, they believe that Mr. Bean is justly entitled to the amount of his claim.

While we do not concede any legal liability on the part of the State of Illinois, in view of the circumstances and equity of the case, we award claimant the sum of $79.65.

(No. 1139—Claimant awarded $246.00.)

JERRY LAURIE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

RESPONDEAT SUPERIOR—*State not liable. Employees.* The State is not liable for injuries sustained by its employees in the discharge of their duty.

EQUITY AND GOOD CONSCIENCE—*award may be made.* An award may be made to a State employee who is injured while in the performance of his duty, as a matter of equity and good conscience.

ANGERSTEIN & SCHNEIDER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed by Jerry Laurie, to recover on account of an injury sustained by him while in the employ of the State of Illinois. The declaration filed alleges that on August 25, 1926, while claimant was in the employ of the State of Illinois, in the capacity of clerk in the Department of Labor in the Illinois Industrial Commission, 139 North Clark street, Chicago, Illinois, and while in the pursuance of his duties as clerk of the Illinois Industrial Commission, while lifting a box of stationery weighing about 300 pounds, he sustained an accidental injury arising out of and in the course of his employment, in that he ruptured himself, and that he duly notified William F. Scanlan, chairman of the Industrial Commission, that he had so ruptured himself, within fifteen days after the occurrence of said accident; that he also notified his superior,

W. W. Baldwin, and that there were two witnesses to his said accident, namely, W. W. Baldwin and Henry Plattner, both employees of the Industrial Commission of the State of Illinois; that thereafter said claimant was operated on by Dr. Ira Boyd Robinson, on September 13, 1926; that he was necessarily in the hospital from September 13, 1926, to September 26, 1926, and was confined to his home for four weeks; that for the operation and the after treatment he was charged the sum of $150.00 by his physician and surgeon above mentioned and that his hospital expenses in the Jefferson Park Hospital in the city of Chicago were the sum of $96.00, and he makes claim for $246.00.

The State of Illinois by the Attorney General has filed a demurrer, which is sustained, as a matter of law.

While there is no legal obligation on the part of the State of Illinois to make an award in this case, in equity and good conscience we award claimant the sum of $246.00, the amount which he would be entitled to receive were he employed under the provisions of the Workmen's Compensation Act of the State of Illinois.

(No. 1146—Claimant awarded $3,750.00.)

DAVID ANDERSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 18, 1927.

EQUITY AND GOOD CONSCIENCE—*when award may be made.* Although the State is not liable for injuries sustained by its employees, while in the performance of their duty, yet an award may be made as a matter of equity and good conscience in his favor, and compensation fixed according to the provisions of the Workmen's Compensation Act.

GILSON BROWN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK B. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEROY delivered the opinion of the court:

This is a claim filed by David Anderson, a patrolman employed by the Highway Department of the State of Illinois, on Roads 3 and 4 in Madison county, on account of injuries sustained by him in the following manner: On October 6, 1925, he was assisting his supervisor, Edward M. Stubblefield, in placing a barricade about one-quarter of a mile north of Nameoki, where some repair work was being done. It was

about dusk in the evening and Mr. Anderson was placing red lanterns and putting up the barricades. He had his work about completed, the lights were up, and as he stepped inside the barricade to put another piece along the center of the road an approaching automobile, running at a rapid rate of speed, crashed into the barricade, knocked the barricade against Mr. Anderson, pushing him over into a ditch, face downward in about ten inches of water. He was rendered unconscious, was pulled out of the ditch by his supervisor, Mr. Stubblefield, who was the only witness to the accident, and taken home by a passing automobile. He suffered a severe blow to his head, an injury to his breast and hip, and was confined to his home in St. Elizabeth's Hospital at Granite City, where he was later removed, for a period of over a month. Since leaving the hospital in December, 1925, he has not been able to do any work; walks with a cane and is a physical wreck; that nurses' bills, amounting to $84.00 and $144.00 have not been paid; that hospital and doctor bills have not been paid, and that claimant is permanently disabled and wholly incapacitated from performing any labor.

A demurrer filed by the Attorney General of the State of Illinois to the declaration is sustained, as a matter of law.

On the grounds of equity and good conscience, we believe that the claimant in this case should receive an award, and we accordingly award to him the sum of $3,750.00, being the amount he would be entitled to receive were he employed under the provisions of the Workmen's Compensation Act of the State of Illinois.

(No. 1155—Claimant awarded $3,750.00.)

MINERVA A. MILES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

WORKMEN'S COMPENSATION ACT—*when award made under provisions of.* **An award may be made under the provisions of the Workmen's Compensation Act, although the State is not legally liable for the death of plaintiff's intestate.**

Mr. ROBERT E. WRIGHT, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed by claimant above named alleges that Frank Miles, the deceased husband of claimant, was dur-

ing his lifetime and at the time of his death an employee of the Division of Highways of the Department of Public Works and Buildings of the State of Illinois; that the said Frank Miles was at said time employed as a laborer, engaged in maintaining a part of the hard-surfaced State Highway known as Route 11, extending north and east from Highland, Illinois; that on September 2, 1926, said Frank Miles while employed as aforesaid, in the excavation of gravel from a gravel pit then being operated by the State of Illinois, to provide gravel for repairing a detour known as Section Patrol No. 80066, received an injury by reason of an accident arising out of and in the course of his employment, which injury resulted from the fall of a large amount of gravel and earth onto the body of said Frank Miles, deceased; that within thirty days following the date of the death of said deceased, on, to-wit: September 15, 1926, claimant gave notice of said accidental injury and death to said Department of Public Works and Buildings, which said notice was given to Charles Slaymaker, division engineer of said Department of Public Works and Buildings, having charge of the part of said road on which deceased was employed as aforesaid; that said Frank Miles earned in his employment the sum of $21.60 per week and that said deceased left claimant, his widow, and no child or children whom he was under legal obligation to support, surviving him; and petitioner prays that she may be awarded the sum of $3,750.00 as compensation for the accidental injury and death as aforesaid.

A demurrer was filed by the Attorney General to the declaration, which, as a matter of law, is sustained.

We award claimant the amount which she would be entitled to receive if the deceased, Frank Miles, were employed under the provisions of the Workmen's Compensation Act of the State of Illinois, or the sum of $3,750.00.

(No. 1160—Claimant awarded $336.40.)

JEFFERSON PRINTING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

CONTRACT—*when State liable for supplies.* The State is liable for supplies and material furnished to the Attorney-General which purchases were approved by the proper department of the State.

NOAH GULLETT, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK F. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant, Jefferson Printing Company, presented its claim on account of merchandise such as stationery, envelopes, filing cards, carbon paper, and other sundry articles of their goods furnished to the Attorney General and Beekeepers Association of the State of Illinois, which are fully set out in the declaration filed in this case, were ordered from time to time in the usual course of business, and the prices charged for same were the usual and customary prices for articles of that character at the time the same were furnished.

It further appears that the bills for said articles were approved by the Director of Purchases and Construction, and the Superintendent of Printing; that the same were not paid for the reason that no appropriation was previously made and no funds available for said payment.

There being no controversy as to claimant's having furnished the merchandise in his bill of particulars, the court therefore awards claimant the sum of $336.40.

(No. 1168—Claimant awarded $2,500.00.)

HARRY MILLER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

NON-LIABILITY OF STATE—*posse comitatus. State not liable for injuries to member of.* This case is controlled by the decision of the court in the case of *Katanich* v. *State, supra.*

ROBERT E. LARKIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant, a police officer in and for the city of Streator,

Illinois, on the 5th day of May, A. D. 1926, was called and notified to assist in capturing certain convicts who escaped from the Illinois State Penitentiary at Joliet, Illinois. Miller responded to the request and encountered the convicts that night on the railroad tracks in said village. A gun battle commenced and a bullet hit the face of claimant about the end of the upper jaw between the nose and ear traveling upward and backward and lodged in front of the spine behind the mouth and between the first and second vertebrae, the bullet is still lodged there, and it is not possible to remove the bullet without grave danger to claimant's life and health. The bullet shot away the upper left second and third molars, took away a portion of the upper anterior of the first and second vertebrae. As a result of the bullet wound Mr. Miller has difficulty in speaking and in closing his jaws, and has some impediment of speech, pains through the neck region and intermittent headaches. Physicians testified that the injuries were permanent and may get worse, and it appears further from the evidence that claimant has continuous headaches and is obliged to quit work frequently.

The Attorney General comes and admits the facts to be fairly stated by claimant.

It must be admitted that there is no legal liability on the part of the State, however, it must be recognized that where an officer was commanded by superiors to enter upon the pursuit of escaped convicts, that it was a hazardous undertaking and consequently as a matter of equity and good conscience the State should respond as far as practical to help a person like this claimant who bravely and efficiently performed his duty in face of grave danger.

While as a matter of fact the court is impressed by the rules of equity and good conscience, yet it cannot be unmindful of the rules of the Workmen's Compensation Act and taking all the evidence and facts under consideration, the court recommends that the claimant be allowed the sum of $2,500.00.

(No. 1173—Claimant awarded $261.50.)

BYRON C. GIBSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

RESPONDEAT SUPERIOR—*State not liable.* The State is not liable for the negligence of its employees while in the discharge of their duty.

EQUITY AND GOOD CONSCIENCE—*award may be made. Property damage.* An award may be made in favor of claimant for damages to his property, on ground of equity and good conscience.

BENJ. F. CASSIDAY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed by Byron C. Gibson, claimant, to recover damages sustained to his Oakland sedan, on November 24, 1926, at about 4 P. M., while he was driving west on State Bond Route No. 10, between Decatur and Springfield, when he was collided with by a converted Packard truck, bearing 1926 Illinois license No. 36987, driven by State Highway Policeman W. Connors, about one mile west of Buffalo, in the county of Sangamon and State of Illinois, at which place the road was straight and level, with an unobstructed view in both directions. The declaration further alleges that said patrolman was driving said truck in an easterly direction on said highway and immediately prior to the collision saw an Illinois Power Company truck parked on the patrolman's side of the concrete slab, and on account of the slab being covered with ice at this time and place, was unable to stop, and in attempting to avoid striking the Illinois Power Company truck turned to the left and collided with claimant's automobile, hitting said automobile on the left rear side; that claimant drives his said automobile in the prosecution of his business on an average of 500 miles a week; that he was out the use of his said car for a period of 14 days; that the value of the loss of the use of said automobile during said time was $15.00 a day; that he spent the sum of $81.50 in making necessary repairs, and claims damages in the sum of $261.50.

A demurrer filed by the Attorney General of the State of Illinois is sustained as a matter of law.

A statement filed by the Attorney General alleges that claimant in his statement correctly states the facts.

While we do not concede any legal liability on the part of the State of Illinois, to compensate claimant on account of the alleged damages, in equity and good conscience we award claimant the sum of $261.50.

(No. 1174—Claimant awarded $4,350.00.)

ERMA CLENDENING, ADMINISTRATRIX OF THE ESTATE OF PAUL E. CLENDENING, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

RESPONDEAT SUPERIOR—*State not liable.* The State is not liable for injuries sustained by its employees while in the performance of their duty.

EQUITY AND GOOD CONSCIENCE—*Award may be made.* While no legal liability exists against the State for injuries sustained by its employees in the discharge of their duty, an award may be made to him for such injuries, as a matter of equity and good conscience and the amount of the award fixed upon the basis of the Workmen's Compensation Act.

OSCAR J. PUTTING, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEROY delivered the opinion of the court:

In this case Paul E. Clendening was employed by the State of Illinois as a State highway patrolman on State Bond Issue Route No. 5. His district was between Elgin and Melrose Park, Illinois.

On the 16th day of February, A. D. 1927, he was patroling within his district with another State highway patrolman, under the orders of his superior officer, both being on the lookout for holdup men who had been working this particular territory a great deal of that time.

The two patrolmen were riding in an automobile, the other patrolman driving the car. While driving on said hard road about 4:00 or 5:00 o'clock of the morning on said date, the car ran onto some ice upon the pavement, which caused it to skid, throwing the deceased through the top of said automobile, after which the car turned over on the deceased, killing him almost instantly.

At the time of his death the deceased left surviving him two children under the age of 16 years and a wife, with whom he was living and supporting.

The salary of the deceased was $150.00 per month as said employee.

Under Paragraph a, Section 7, of the Workmen's Compensation Act, which is as follows: "If the employee leaves any widow, child or children whom he was under legal obligations to support at the time of his injury, a sum equal to four times the average annual earnings of the employee, but not less in any event than $1,650.00 and not more in any event than $3,750.00. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amount payable on death," and Paragraph h of Section 7, which is as follows: "Whenever in paragraph (a) of this section a minimum of $1,650.00 is provided, such minimum shall be increased in the following cases to the following amounts: $4,350.00 in case of two or more children under the age of 16 years at the time of the death of the employee," this claimant would be entitled to $4,350.00.

For the reason that as a matter of law the State is under no legal obligation to compensate for injuries of this kind, we hold the demurrer filed in said cause good. However, as a matter of equity and social justice, we recommend that an award be made in this case on the basis of the Workmen's Compensation Law.

We therefore recommend an award of $4,350.00.

(No. 1175—Claimant awarded $4,350.00.)

BLANCHE COONS, ADMINISTRATRIX OF THE ESTATE OF CHARLES J. COONS, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

WORKMEN'S COMPENSATION ACT—*when award fixed under provisions of.* Where an employee of the State engaged in a hazardous employment, and is injured while in the discharge of his duty, an award will be made, and the Workmen's Compensation Act will be used as a basis in fixing the amount of the award to him.

POLICY OF STATE—*when award made under.* The court will consider and treat the employees of the State in the same manner as if they were employees of private individuals.

OSCAR J. PUTTING, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant, as administratrix of the estate of Charles J. Coons, deceased, comes and represents that said deceased was regularly employed as foreman in charge of sewer work at

Elgin State Hospital; that on the 22nd day of March, 1927, while employed laying sewer pipe in a ditch and while cementing the joint of the pipe so laid the sides of the ditch caved in, suffocating and seriously injuring deceased, that as a result of such injuries said deceased died; that deceased was 37 years of age and in good health prior to his injuries; that deceased left surviving him his wife and five minor children, the oldest of said children being 15 years and the youngest 6 years at the time of his death. The claimant asks for damages of $6,000.00. However, the only rule the court can follow in a case of this kind is the Workmen's Compensation Act, as it has been the rule of this court to endeavor to treat the employees of the State of Illinois who are injured in the employment of the State of Illinois in the same manner as if they were employed by private individuals.

The Attorney General comes and admits the facts as stated and the law as hereinbefore construed.

Under the terms of the Workmen's Compensation Act, as a measure for damages in this case, the claimant would be entitled to $4,350.00. Therefore this court recommends that payment be allowed in the sum of $4,350.00.

No. 1179—Claimant awarded $1,811.02.)

ANNA CLARY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 18, 1927.

RESPONDEAT SUPERIOR—*when State not liable.* The State is not liable for injuries sustained by its employees while in the discharge of their duty.

EQUITY AND GOOD CONSCIENCE—*award may be made.* Upon the ground of equity and good conscience an award may be made to claimant for injury sustained by him while in the discharge of his duty.

EDWARD P. ALLEN and MARKS ALEXANDER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant herein filed a declaration in this court on April 8, 1927, in which she alleges that on January 24, 1924, she was an employee of the State of Illinois, in the Soldiers' and Sailors' Home in the State of Illinois, located at the city of Quincy, Illinois, employed there as a cook; that for services

rendered in her said employment she was paid $35.00 a month, and in addition thereto she received her full maintenance, including her room, her board, her laundry and the uniforms used by her in her said employment as cook; that it was the duty of said State of Illinois to provide safe and secure sidewalks in and about the said charitable institution where the plaintiff was then employed, and to keep said sidewalks free and clear of ice so as to make same safe and secure for use of plaintiff in going in the course of her employment, from building to building at said institution; that said State of Illinois wholly failed in its duty in this behalf, and allowed the sidewalk between the library building and the dining room, which are parts of said institution, to become covered with ice and slippery, so as to render same dangerous to anyone attempting to pass over same; that on said 24th day of January, 1924, she was in the course of her said employment walking on said sidewalk between said library building and said dining room, and was then and there in the exercise of due care and caution for her own safety, and that she fell, by reason of said icy and slippery condition of the sidewalk, and by reason of said negligence and carelessness of said State of Illinois she then and there suffered a severe fracture of the hip and severe fracture of the pelvic bone, and was otherwise wounded, maimed and injured, and suffered great pain and anguish and is permanently injured and crippled. A bill of particulars filed shows damages sustained amounting to $1,811.02.

A demurrer filed by the Attorney General to the declaration is sustained, as a matter of law.

While there is no legal liability on the part of the State of Illinois to make any compensation on account of the injuries above mentioned, in equity and good conscience, we feel that claimant has suffered an injury while in the employ of the State of Illinois, and we award to her the sum of $1,811.02.

(No. 1182—Claimant awarded $671.00.)

ELMER C. FREIN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 18, 1927.

EQUITY AND SOCIAL JUSTICE—*when award made under rule of.* Although no liability exists against the State for injuries sustained by its employees while in the discharge of their duty, an award may be made to him for the injury sustained, on grounds of equity and social justice, and the award fixed under the provisions of the Workmen's Compensation Act.

McCARTHY & McCARTHY, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

In this case Elmer C. Frein, claimant, was employed as a laborer in the maintenance department of the State of Illinois. While engaged in his capacity as laborer on the 7th day of October, A. D. 1926, claimant was unloading a snow plow from a truck at Plainfield, Illinois, and in attempting to lift the snow plow from the truck, claimant was injured internally and it became necessary, as a result of said injury, to submit to an operation.

In consequence of said injury and resultant operation, claimant was physically unable to perform any kind of manual labor for a period of six months, to-wit, from the 7th day of October, A. D. 1926, up to and including the 7th day of March, A. D. 1927.

Under the terms of the Workmen's Compensation Act (Chap. 48, Sec. 8, Smith-Hurd's Ill. Rev. Stat.), claimant is entitled to a sum of $200.00 for medical and hospital expenses, and under the same section is entitled to $471.00 for the time during which he was incapacitated.

As a matter of law, this court sustains the demurrer of the Attorney General; however, as a matter of equity and social justice, we recommend that an award of $671.00 be made, which is the amount allowed under the Workmen's Compensation Act.

(No. 1184—Claimant awarded $424.78.)

JOE LA FLAMME, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

REIMBURSEMENT—*award may be made. Damage to property.* Where there is no dispute as to the facts in this case, and the claim being equitable and just, the court may enter an award in favor of claimant for damage to his property.

JOHN H. WALKER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed by claimant in this case alleges that on July 1, 1926, he was driving from Chicago Heights to Streator, Illinois, on State Bond Route No. 17; that while driving toward Streator on said date he collided with William Winkle; that at the time and place of said accident, claimant was driving at a legal and reasonable rate of speed, using all due care and caution for his own safety and the safety of others, on the right hand side of said road; that as a result of said collision it was necessary, and he did expend in and about the repairing of said car the sum of $424.78; that said William Winkle was an employee of the State of Illinois.

A demurrer was filed to this declaration by the Attorney General, which is sustained, as a matter of law.

A letter from C. R. Miller, Director of Public Works and Buildings, who investigated this claim, recommends that an award be granted and states that the claim is equitable and just.

We accordingly make an award to claimant of $424.78.

(No. 1185—Claim denied.)

HERMAN B. MEYERS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

FEES & SALARIES—*when award will not be made.* The court will not attempt to adjust differences of opinion between departments of the State and its employees as to salaries, except where there is a lack of funds in the department to pay the salary fixed by law, or some effort made by the department and its employees to adjust their differences.

HERMAN B. MEYERS, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim to recover for additional salary as inspector of lodging houses for the State of Illinois under the Department of Public Health of the State of Illinois. The claimant complains that he received only $1,800.00 per year and that his additional compensation should come under an act of the legislature, effective July 1, 1925. The Attorney General comes and offers a copy of a report of the Director of the Department of Public Health, which appears to fix this claimant's salary at $150.00 per month, and this court cannot gather from said report any other construction.

There is nothing in this record to indicate any demand or why there was not any change made, or if there was a misunderstanding between claimant and the Department of Public Health. This court does not feel that it is called upon to settle differences of opinion between departments and its employees, at least not until there would be some effort shown to get together, or a showing made that there was lack of funds in this department.

It is the opinion of this court from the records before it, that there is not a reasonable basis to make an allowance. Therefore this claim is disallowed.

(No. 1186—Claimant awarded $2,466.19.)

THE LIQUID CARBONIC COMPANY, NAME CHANGED TO MCINTOSH CARBONIC COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

FRANCHISE TAX—*when refund will be made. Overpayment.* Where through an error in the computation of the tax claimant paid a larger tax than is legally due the State, it is entitled to a refund of the amount of the overpayment.

GILLESPIE & GILLESPIE, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim to recover $2,466.19, being the sum paid the State of Illinois as franchise tax for the years 1923 and 1924, in excess of the sum due the State of Illinois for those years. The claimant, the Liquid Carbonic Company, in its declaration, states that it is an Illinois corporation, with its principal business office at 3100 South Kedzie avenue, in the city of Chicago, State of Illinois; that in the year 1923 it had an authorized capital stock of $5,500,000.00 par value shares, and that the total value of all the property of the corporation, located everywhere, and the total business of the corporation, transacted everywhere, amounted to $13,514,284.00, and the total amount of its business transacted in the State of Illinois amounted to $4,117,524.00; the proportion of its authorized capital, taxable in the State of Illinois, was therefore .30467, and the value of the authorized capital stock taxable in that year amounted to $1,675,685.00, and the tax due the State of Illinois on such portion of its authorized capital stock $837.84, but that through an error in computation, petitioner paid in the year 1923 a franchise tax of $2,009.26, which sum was $1,171.42 in excess of the amount lawfully due the State of Illinois as a franchise tax from petitioner; that in the year 1924 it had an authorized capital stock of $5,500,000.00 par value shares, and that the total value of all of the property of the corporation, located everywhere, and the total business of the corporation, transacted everywhere, amounted to $13,537,289.00, and the total value of its property located in the State of Illinois, and the total amount of its business transacted in the State of Illinois amounted to $3,932,975.00; the

proportion of its authorized capital taxable in the State of Illinois was, therefore, .29052, and the value of its authorized capital stock taxable in that year amounted to $1,597,860.00, and the tax due the State of Illinois on its authorized capital stock was $798.83; but that through an error in computation, petitioner paid in the year 1924 a franchise tax of $2,093.60, which sum was $1,294.77 in excess of the amount lawfully due the State of Illinois as a franchise tax from petitioner, and that there is due therefore to claimant the sum of $2,466.19.

A written consent of the Attorney General of the State of Illinois to the allowance of claim of petitioner in the sum of $2,466.19 was filed, and we accordingly award claimant the sum of $2,466.19.

No. 1187—Claimant awarded $896.38.)

AYER & LORD TIE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

FRANCHISE TAX—*when claimant entitled to refund.* The decision of the court in the case of *McIntosh Carbonic Co.* v. *State, supra,* governs this claim.

GILLESPIE & GILLESPIE, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim to recover $896.38, being a sum heretofore paid as franchise tax to the State of Illinois in excess of the amount legally due. Claimant in its declaration sets out that it is an Illinois corporation, having its principal office in the State of Illinois at 80 East Jackson boulevard, in the city of Chicago; that in 1926 it had an authorized capital stock of $2,450,000 of par value shares, and in that year the total value of its property located everywhere and the total amount of its business transacted everywhere amounted to $8,102,907.00; that the total value of its property located in the State of Illinois and the total amount of its business transacted in the State of Illinois in that year amounted to $2,173,692.00; the taxable proportion of its authorized capital stock being .26826 or $657,237.00 taxable authorized capital stock for the

year 1926; that the franchise tax lawfully due the State of Illinois on such proportion of its authorized capital stock for the year 1926 was $328.62, but that it paid a franchise tax in that year of $1,225.00, which sum was in excess of the amount lawfully due the State as franchise taxes to the amount of $896.38; that the error in computation resulted through no fault of petitioner, but from a misinterpretation of the statements made by petitioner in its annual report to the Secretary of State for the year 1926.

The Attorney General of the State of Illinois has filed herein a written consent to the award of $896.38, being refund of franchise fee paid in excess of the legal fee due through an error in computation for the year beginning July 1, 1926, and we accordingly award claimant the sum of $896.38.

(No. 1191—Claimant awarded $2,105.00.)

SCHUYLER E. REDPATH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

FEES & SALARIES—*when award will be made.* Where the salary of a State officer has been fixed by law, and the legislature fails to appropriate a sufficient sum to pay the salary, an award will be made in favor of such officer for the difference between the amount fixed by statute and the amount paid to him under the appropriation made by the General Assembly.

NOAH GULLETT, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant was appointed in due course as a member of the State Mining Board, and entered upon the duties of his position on the 5th day of December, 1923, and has been continuously employed in said position since the date aforesaid.

It appears that the legislature in making the appropriation for the salary in question, did not take into consideration the law enacted by the Fifty-second General Assembly, effective July 1, 1921, which increased the salary of the members of the State Mining Board from $500.00 to $1,000.00 per annum, being an increase of from $5.00 to $10.00 per day for

100 days' services per annum; and that the legislature has not appropriated sufficient money to pay the increase in salary which was so provided for by the Fifty-second General Assembly, as aforesaid.

That claimant has been paid by the State of Illinois a salary of $500.00 per annum, being $5.00 per day for 100 days' services per annum, and it appears that there is now due and will be owing to him as unpaid salary from the 5th day of December, 1923, to the 1st day of July, 1927, the sum of $2,105.00, this being the difference between the amount paid him and the amount allowed by the statute, up to July 1, 1927.

The Attorney General, on behalf of the State, has filed his statement in this cause, and makes no defense thereto, but submits the same upon the recommendation of the Director of Mines and Minerals.

The court therefore awards claimant the sum of $2,105.00.

(No. 1192—Claimant awarded $2,630.00.)

FRANCIS M. DEVLIN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 18, 1927.

FEES & SALARIES—*when award will be made.* This case is controlled by the decision of the court in *Redpath v. State, supra.*

NOAH GULLETT, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant was appointed in due course as a member of the State Mining Board, and entered upon the duties of his position on the 1st day of December, 1922, and has been continuously employed in said position since the date aforesaid.

It appears that the legislature in making the appropriation for the salary in question, did not take into consideration the law enacted by the 52nd General Assembly, effective July 1, 1921, which increased the salary of the members of the State Mining Board from $500.00 to $1000.00 per annum, being an increase of from $5.00 to $10.00 per day for 100 days' services per annum; and that the legislature has not appropriated sufficient money to pay the increase in salary which

was so provided for by the 52nd General Assembly, as aforesaid.

That claimant has been paid by the State of Illinois a salary of $500 per annum, being $5.00 per day for 100 days' services per annum, and it appears that there is now due and will be owing to him as unpaid salary from the 1st day of December, 1922, to the 1st day of July, 1927, the sum of $2,630.00, this being the difference between the amount paid him and the amount allowed by the statute, up to July 1, 1927.

The Attorney General, on behalf of the State, has filed his statement in this cause, and makes no defense thereto, but submits the same upon the recommendation of the Director of Mines and Minerals.

The court therefore awards claimant the sum of $2,630.00.

(No. 1193—Claimant awarded $3,000.00.)

MONT S. COLEMAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 12, 1927.

FEES & SALARIES—*when award will be made.* This case is controlled by the decision of the court in *Redpath* v. *State, supra.*

NOAH GULLETT, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant was appointed in due course as a member of the State mining board, and entered upon the duties of his position in 1917, and has been continuously employed in said position since the date aforesaid.

It appears that the legislature, in making the appropriation for the salary in question, did not take into consideration the law enacted by the 52nd General Assembly, effective July 1, 1921, which increased the salary of the members of the State mining board from $500.00 to $1,000.00 per annum, being an increase of from $5.00 to $10.00 per day for one hundred (100) days services per annum; and that the legislature has not appropriated sufficient money to pay the increase in salary which was so provided for by the 52nd General Assembly, as aforesaid.

That claimant has been paid by the State of Illinois a salary of $500.00 per annum, being $5.00 per day for one hundred (100) days services per annum, and it appears that there is now due and will be owing to him as unpaid salary from the 1st day of July, 1921, to the 1st day of July, 1927, the sum of $3,000.00, this being the difference between the amount paid him and the amount allowed by the statute, up to July 1, 1927.

The Attorney General, on behalf of the State, has filed his statement in this cause, and makes no defense thereto, but submits the same upon the recommendation of the director of mines and minerals.

The court therefore awards claimant the sum of $3,000.00.

(No. 1194—Claimant awarded $3,000.00.)

JAMES NEEDHAM, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 18, 1927.

FEES & SALARIES—*when award will be made.* This case is controlled by the decision of the court in *Redpath v. State, supra.*

NOAH GULLETT, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant was appointed in due course as a member of the State mining board, and entered upon the duties of his position in 1917, and has been continuously employed in said position since the date aforesaid.

It appears that the legislature, in making the appropriation for the salary in question, did not take into consideration the law enacted by the 52nd General Assembly, effective July 1, 1921, which increased the salary of the members of the State mining board from $500.00 to $1,000.00 per annum, being an increase of from $5.00 to $10.00 per day for one hundred (100) days services per annum; and that the legislature has not appropriated sufficient money to pay the increase in salary which was so provided for by the 52nd General Assembly, as aforesaid.

That claimant has been paid by the State of Illinois a salary of $500.00 per annum, being $5.00 per day for one hun-

dred (100) days services per annum, and it appears that there is now due and will be owing to him as unpaid salary from the 1st day of July, 1921, to the 1st day of July, 1927, the sum of $3,000.00, this being the difference between the amount paid him and the amount allowed by the statute, up to July 1, 1927.

The Attorney General, on behalf of the State, has filed his statement in this cause, and makes no defense thereto, but submits the same upon the recommendation of the director of mines and minerals.

The court therefore awards claimant the sum of $3,000.00.

(No. 722—Claimant awarded $2,514.20.)

SUNBEAM CHEMICAL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 20, 1927.

FRANCHISE TAX—*when refund will be made.* This case is similar to that of *Altorfer Bros.* v. *State*, and the decision of the court there announced governs this claim.

BLUM, BLUM & DELANEY and PAUL O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for a refund of excess franchise taxes paid to the State of Illinois in the years 1921 and 1922. The excess amount is $2,514.20. The only question involved in this case is the question whether this money was paid under duress and compulsion or whether it was paid voluntarily. The facts and law on this point are exactly identical with those in the Altorfer Brothers case, in the opinion in which case we fully discussed this subject. We are, therefore, of the opinion that this claimant is entitled to a refund of $2,514.20, and hereby award that sum.

(No. 848—Claim denied.)

LESLIE R. HENLINE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

HARD ROADS—*when claimant not entitled to be compensated.* The State is not liable to compensate claimant, who as a mortgagee with knowledge that the land is being taken for the construction of the State hard road, receives a part of the consideration paid to the mortgagor in condemnation for the right of way and credits same on the mortgage indebtedness.

WILLIAM C. RADLIFF, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On January 22, 1920, Jesse E. Haworth executed a trust deed conveying to Frank O. Hanson, trustee, 88 acres of land in McLean county to secure the payment of his note of even date, payable to his order, for $11,000.00, due in five years, with interest thereon at 5½%. The note was duly endorsed and delivered to Hans Sachs, conservator for Arnetta O. Gregory. Thereafter, on May 23, 1921, Haworth executed and delivered an instrument conveying to the People of the State of Illinois a strip of ground across a portion of said land for the right of way of State Route No. 4, which instrument was filed for record in the recorder's office of McLean county August 9, 1922, and recorded in Book 352 of Deeds at page 150. The right of way contained 5.02 acres, for which $752.00 was paid to Haworth. At the time the release for the right of way was taken Haworth was the owner of the land and Sachs was the owner of the note secured by the trust deed. Haworth was given a check for $125.00 by persons who represented the State in the transaction, which check was endorsed by him and delivered to Sachs, who credited it on the interest due on the note. Sachs knew that Haworth had signed and delivered the release for the right of way, and it is evident the $125.00 check given him by Haworth was part of the $752.00 paid Haworth for the release. Sachs knew of the conveyance of the right of way by Haworth and did not object to it. It is apparent he consented to it, as he testified that he was satisfied the taking of the strip of land for right of way would not jeopardize his ward's interest because he thought the hard road would add enough to the value of the farm to compensate for the land used.

The interest due July 22, 1922, and January 22, 1923, on the $11,000.00 note held by Sachs not being paid, the whole debt was declared due and a bill filed in the circuit court of McLean county to foreclose the trust deed, and a decree of foreclosure granted April 28, 1923. The decree provided that the master in chancery should issue a certificate to Sachs, as provided by the act approved June 11, 1917, and that if the land was not redeemed within 15 months from the date of the certificate, the master should sell it to satisfy the amount due and costs. The land, not having been redeemed, the master sold it September 13, 1924, to claimant for $19,712.00 cash, which was more than the amount due Sachs, including interest, solicitor's fees, costs, and expenses of the sale. The master in chancery furnished claimant an abstract of the title to the land, which claimant had his attorney examine. This abstract showed the conveyance of the right of way by Haworth and that the consideration paid for it was $752.00. Claimant knew as early as November, 1921, that the road was located on the land in question, and at the time he bought it he knew the pavement had been laid and the road completed.

The record also shows that Haworth is insolvent and that there is a number of unsatisfied judgments against him.

Claimant asks that the State pay him the $752.00 heretofore paid to Haworth upon condition that he execute and deliver an instrument conveying the right of way in question to the State. The Attorney General filed a general demurrer to claimant's declaration. As both parties have submitted evidence, the demurrer will be overruled and the case heard as if a general traverse of the declaration had been filed.

The right of the State is paramount to that of the individual. Every person who owns property holds it subject to the right of the State to take it for public use. The only limitation upon the power of the State to take private property for public use is, that it cannot be taken without just compensation to the owner. If the owner and the State cannot agree upon the compensation, the State may have the compensation fixed by a court of competent jurisdiction. Before the aid of the court can be invoked the State must endeavor to agree with the owner upon the amount to be paid for the property to be taken. If no agreement can be reached a petition may be filed in court to have the value of the property ascertained. If an agreement is reached no petition can or need be filed, as the owner, upon payment of the amount

agreed on, can convey the property needed. All persons having an interest in the property must be made parties to proceedings for condemnation. If the property is mortgaged the owner of the mortgage is a necessary party. But he cannot defeat the right of the State to take the property. All he can do is have the court protect his interest by ordering an equitable portion of the compensation awarded paid to him to be applied on the debt secured by the mortgage. (*Trustees of Schools* v. *Harshman*, 262 Ill. 72.)

In the present case no persons had any interest in the land taken for the right of way of the road except Jesse E. Haworth and Hans Sachs. Haworth owned the fee, subject to the mortgage, and Sachs owned the mortgage. Haworth agreed with the representatives of the State to convey the right of way for $752.00. He executed and delivered the conveyance of the right of way and the $752.00 was paid to him. Sachs knew of this agreement and conveyance, and was virtually a party to it. He received $125.00 of the money paid to Haworth and credited it on the mortgage debt due to him from Haworth. He was satisfied with the arrangement because, in his judgment, the construction of the paved road would increase the value of the mortgaged property more than the value of the land taken for right of way. In this view he was probably correct. In any event the land sold for several thousand dollars more than enough to pay his debt, interest and costs, and neither he nor Haworth suffered any loss because of the conveyance of the right of way to the State.

With knowledge of these facts, claimant voluntarily purchased the property, and to now require the State to pay for it a second time would be highly unjust and inequitable. The claim will be disallowed and the cause dismissed.

(No. 931—Claimant awarded $55,104.46.)

MONTGOMERY WARD & COMPANY, A CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

FRANCHISE TAX—*when refund may be awarded.* The decision of the court in the case of *Allorfer Bros.* v. *State*, controls in this case.

MORAN, PALTZER & O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE LESCH delivered the opinion of the court:

The claim in this case is for the repayment of excess taxes

paid by the claimant. The facts are not in controversy in this case and are substantially the same as those in the case of Altorfer Brothers Company, in which we have filed an opinion today. The questions of law involved are also the same. There is no question involved here of the Statute of Limitations. For the reasons given in the Altorfer case, we, therefore, are of the opinion that this claimant is entitled to the refund of excess taxes paid aggregating $55,104.46 and that the State should in equity and good conscience repay this sum. The sum is hereby awarded.

No. 938—Claim denied.)

AUGUST TOEDTER, EDWARD TOEDTER AND MATILDA TOEDTER, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 20, 1927.

EMINENT DOMAIN—*judgment of court in condemnation proceeding binding.* The county court in condemnation proceedings, having all parties interested in the subject matter before it, is binding upon all parties thereto, until it is reversed, modified or otherwise adjudged erroneous.

FORMER ADJUDICATION—*same question cannot again be litigated.* Where the court having jurisdiction of the subject matter and of the parties decides a controversy, the same question or issue involved is settled forever between them, and all persons in privity with them or either of them, and neither of them can again litigate any fact or question which was decided in the former proceeding, or could have been raised in the former proceeding.

COURT OF CLAIMS—*when without jurisdiction.* The Court of Claims is without jurisdiction to determine whether the county court erred in its decision in a condemnation proceeding. The remedy is an appeal from the decision.

OSCAR W. HOBERG, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimants are the widow and two sons of John Toedter, deceased, who died testate in LaSalle county, May 20, 1923. By the terms of deceased's will his widow is given a life estate in the lands described in the declaration in this case and the two sons are given the remainder in fee.

On May 17, 1924, the Department of Public Works and Buildings, acting for and on behalf of the people of the State

of Illinois, filed a petition in the county court of LaSalle county to condemn a strip of land containing 1.385 acres out of the lands of claimant for the right of way of a portion of State Route No. 2. Claimants were made parties defendant to the condemnation proceedings, were served with process and appeared and contested the action. In that suit claimants contended that the other and adjacent lands of theirs described in the declaration filed in this case would be damaged by the construction of the proposed road and offered testimony to prove such damages. But the court refused to permit them to give such evidence because they had filed no cross-petition praying to have such damages ascertained. Thereupon claimant moved the court for leave to file such cross-petition instanter but the court denied their motion. Evidence was introduced by both the State and claimants and the jury having viewed the premises returned a verdict fixing the compensation of claimants for the land taken at $415.50, and judgment was rendered for that amount. Claimants prayed an appeal to the Supreme Court which was granted. They did not perfect their appeal and the judgment of the trial court became final. The foregoing facts all appear from the allegations of the declaration filed in this case, and claimants are now asking this court to award them the damages for lands not taken which the county court refused to permit them to prove in the condemnation proceedings.

The Attorney General filed a demurrer to the declaration, and evidence has been submitted by both parties.

The power of eminent domain is inherent in the State, and all citizens hold their property subject to the right of the State to take it for public use. The only litigation on the power of the State to appropriate private property for public use is that just compensation shall be paid to the owner of the property so appropriated. Where the owner and the State cannot agree on the compensation to be paid the State may institute proceedings in a court of competent jurisdiction to have the compensation fixed by a jury, and that was done in this case. By filing the petition to condemn the lands of claimants the State voluntarily submitted itself to the jurisdiction of the county court, and by the service of the summons on claimants the court acquired jurisdiction of them. The court thereby became clothed with power to adjudicate and decide all questions connected with and arising out of the

condemnation proceedings. In that suit claimants sought to show that the construction of the proposed road through their land would result in damages to the land not taken for right of way purposes, but the court refused to permit them to make such showing. That question was one properly before the court in those proceedings and its judgment thereon is binding upon all the parties thereto so long as it stands unreversed. When any question has been finally determined in a proceeding in a court having jurisdiction of the subject matter and parties in the action such question cannot again be litigated between the same parties either before the same or another tribunal until that adjudication has been reversed, modified or otherwise adjudged erroneous. In *U. P. Ry. Co.* v. *C. R. I. & P. Ry. Co.*, 164 Ill., at page 105, the Supreme Court in discussing this question said: "The rule deducible from the cases in this State is, that a question which is involved within the issues of a former controversy is conclusively settled, as between the parties, by the decision in that controversy, whether the court in its judgment passed specifically on that particular question or not." In *Chicago Terminal R. R. Co.* v. *Barrett*, 252 Ill., at page 89, the rule is announced in the following language: "When a court having jurisdiction decides a controversy, the question involved is settled forever between the parties to the suit and persons in privity with them, and neither can again litigate with the other any fact or question actually or directly *in issue* which was passed upon and determined by the court." The county court of LaSalle county had jurisdiction of the subject matter of the condemnation proceedings and of the parties to it. The subject matter included the question of damages to lands of claimants not taken for right of way purposes. Claimants submitted that question to the court for decision (1) by offering to prove such damages and (2) by asking leave to file a cross-petition setting up such damages. The county court decided the question adversely to the contention of claimants. That decision was not appealed from and is still in full force and effect and binding upon all parties to that suit. Whether or not the county court erred in its decision is a question which this court has no jurisdiction to determine. Under the provisions of section 12 of the Eminent Domain Act claimants had the right to appeal from that judgment to the Supreme Court. The county court granted them an appeal in accordance with the provisions of law but they did not see

proper to perfect it. Not having done so, the judgment became final and they are bound by it, and cannot re-litigate the question in this court.

The declaration showing on its face that claimants have no cause of action, the demurrer will be sustained.

Although claimants' declaration shows they are not entitled to maintain their action, we have carefully read and considered all the evidence introduced in the case and the arguments in support of their claim, and have reached the conclusion that they have suffered no damage by the construction of the road other than the value of the land taken for right of way.

The claim will therefore be disallowed and the cause dismissed.

(No. 965—Claimant awarded $29,522.86.)

STEWART-WARNER SPEEDOMETER CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

FRANCHISE TAX—*when award may be made.* This case is controlled by the decision of the court in cases of *Booth Fisheries* v. *State* and *Altorfer* v. *State.*

PAUL O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

In this case there is involved the claim for a refund of excess annual taxes paid and also a claim for refund of excess additional initial fees paid. The facts showing that these payments were made under duress and compulsion are the same as those in the Altorfer case, and our conclusion as to the law on this point is the same as in the Altorfer case. It appears that the claimant had paid the sum of $32,067.14 in excess of the amount due it under the law as annual taxes in the years mentioned. There was, however, the defense of the Statute of Limitations, the same as set forth and discussed in our decision in the Booth Fisheries case, and, in the case of this claimant, the amount so paid was $11,159.78. We reach the same conclusion in this item as was reached in the Booth Fisheries case in the item there. This sum having been paid more than five years before the suit was filed and this claim

being based upon the question of the construction of the statute which the court could have passed upon at any time, we have decided that the court will not allow this item of the claim. The remaining items on the annual tax are allowed. These aggregate $21,908.36. There is an additional claim in this case for excess initial fees paid by this corporation, amounting to $7,614.50. The question of law involved as to this item is the same as the similar question involved in the Altorfer case, and our conclusion is, as we announced there, that the State should, in equity and good conscience, refund this excess initial fee so paid. The court, therefore, finds that this claimant is entitled to an award of the aggregate of said two sums, amounting to $29,522.86. This court is of the opinion that the State of Illinois, in equity and good conscience, should repay said sum and said sum is hereby awarded.

(No. 966—Claim awarded $6,941.25.)

ALTORFER BROS., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 20, 1927.

FRANCHISE TAX—*when paid under duress may be refunded.* Where the franchise tax has been paid under legal duress it may be recovered.

SAME—*how payment under determined.* Whether the payment of the tax was made under duress may be determined from the surrounding facts and circumstances. A written letter of protest is unnecessary to preserve the tax payers' rights.

SAME—*written protest. Act of 1923.* The act of 1923 providing for the holding of moneys thirty days where paid under written protest did not abrogate the common law rule that payment under duress or compulsion may be recovered, but only provides an alternative procedure where payments are made under written protest.

ADDITIONAL INITIAL FEES—*how assessed.* Additional initial fees should be assessed upon the increase of the capital stock of the corporation.

CONSTRUCTION OF STATUTES—*when court will construe statute.* The Court of Claims has the right to construe a statute when its construction is necessary to enable the court to perform its duty in determining the legality of a claim before it for consideration.

PAUL O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claim filed herein is for a return or award of excess franchise taxes and initial fees paid by the claimant prior to

the year 1923. The facts are not in dispute, and only questions of law are involved herein.

The claimant is entitled to a refund of $4,156.25 under the ruling of the Supreme Court in the case of *People, ex rel, Roberts & Schaefer*, v. *Emmerson*, 305, Ill. 348, provided this court decides that the payments made by this company were involuntary. The Attorney General, in his very able brief, has contended that this claimant cannot recover on this item because no written letter of protest was filed with the payment or payments making up the total excess amount above set forth. The Supreme Court of Illinois, in the *Illinois Glass Company* v. *Chicago Telephone Company*, 234 Ill. 535, expressly holds that "compulsion may appear from the circumstances and not from any expression of unwillingness or protest against the payment." The same court, in a large number of cases involving the claims for return of taxes paid to various local taxing bodies, has repeatedly held that payments made under duress or compulsion are involuntary and that no letter of protest is necessary in order to prove that the payment was involuntary and that said fact may be determined from the surrounding facts and circumstances. From the facts in this case, and especially from the drastic provisions of the General Corporation Act, this court is of the opinion that the payments were not made voluntarily by the claimant, but were made under duress. The facts in the case of *Swi* v. *United States*, Ill. U. S., page 22, which was an appeal from the Court of Claims to the United States Supreme Court, were very similar to the facts in this case, and the Supreme Court of the United States in that case held that a written letter of protest was unnecessary to preserve the taxpayers' rights, where the statute did not make such a letter a condition precedent to the recovery of the tax. No provision of the statutes of the State of Illinois required that money sought to be recovered must be paid under protest prior to the year 1923. There was, in the year 1921, enacted a statute which did provide for a special procedure if the moneys were paid under a written letter of protest, but that statute apparently reserved to this court the jurisdiction of determining the same claim by the procedure usually followed in this court. The statute did not do away with the common law rule that payment under duress or compulsion may be recovered, but provided an alternative procedure where payments were made under written protest. In the year 1923 this statute, enacted

in 1921, was repealed. A new statute was passed in 1923 which provided for the holding of money paid under written letter of protest for a period of thirty days so as to enable the protesting taxpayer to bring his protest to the notice of a court of record by a proper injunction proceeding. The Attorney General has ably argued that this statute establishes a procedure for testing these questions and recovering illegal taxes in courts of record, and that this court should refuse to take jurisdiction of such claims, where the claimant might have gone into a court of record and litigated his claim there against a State officer having custody of the funds. There is a great deal to be said in favor of the argument advanced by the Attorney General, however, the payments involved in these claims were all made prior to the enactment of the statute of 1923, and his argument, therefore, has no weight in this particular case.

The second point involved in this case is a question of the right of this claimant to recover the sum of $2,335.00, which it paid as additional initial fees and which it claimed were not required to be paid by the statute, but were collected by the Secretary of State and paid by the claimant under compulsion and duress. The facts with reference to the compulsion and duress were practically identical with those we have discussed above, and we reach the same conclusion as to that point as we did above with reference to the excess annual taxes paid. There is the further defense urged by the Attorney General as to this item which is not urged as to the annual tax. The Attorney General claims that this court has no right to construe the statute of the State of Illinois and determine its meaning. In this case the Secretary of State construed the General Corporation Act to mean that wherever a corporation changed its shares from par value into no par value, even though it did not increase either expressly or actually or theoretically its authorized capital stock, nevertheless, since it did increase its shares and change them from par to no par, that the statute provided for an additional initial fee based upon authorized capital stock computed by multiplying the non par shares $100 each. The statute says quite plainly that the additional initial fee shall be assessed upon increases in the capital stock. It also says that where the company has non par stock or shares, such shares shall be considered of the par value of $100 each. This same question was before the Supreme Court of Massachusetts in the case of *Hood Rub-*

ber Co. v. Massachusetts, 131 N. E. 201. The court, in that case, in a very well-reasoned opinion, construed the statute to mean that all the actual increases of the capital stock were meant by the legislature to be subject to the assessment of an additional initial fee. The act in Massachusetts was quite similar to the act here in Illinois.

We believe that the complainant's construction of the statute is correct and that the Secretary of State assessed this company an excess amount as additional initial fees. This court has the right to construe a statute when its construction is a necessary function for this court to perform in passing upon and determining a claim presented to it. The conclusion of this court, therefore, is that the State of Illinois should, in equity and good conscience, repay to the claimant the total sum claimed by him, amounting to $6,941.25, and such sum is hereby awarded.

(No. 983—Claimant awarded $1,235.60.)

BOOTH FISHERIES COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

FRANCHISE TAX—*tax paid under duress may be refunded.* The tax being paid under duress or compulsion may be refunded.

STATUTE OF LIMITATIONS—*when it begins to run.* Where the statute under which the tax was paid was declared unconstitutional by the Supreme Court, the statute begins to run against the claim from the date of the decision of the court, otherwise it begins to run from the date of the payment of the tax.

PAUL O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE LEACH delivered the opinion of the court:

The facts in this case are not in dispute and it is admitted that the claimant paid the sum of $2266.90 as excess franchise taxes in the years 1920, 1921 and 1922. These computations are based upon the ruling of the Supreme Court in the case of *People, ex rel Roberts & Schaefer v. Emmerson*, 305 Ill. 348. The question of whether the payment was voluntary or made under duress and compulsion was presented and argued by both sides and the facts and the law as to this point is the

same and our conclusion is the same as that arrived at in the case of Altorfer Brothers Company, No. 966, on which we have filed an opinion. There is, however, in this case an additional point not occurring in the Altorfer case and that is that one of these tax payments sought to be recovered was paid in July, 1920, and the claim was not filed until more than five years after the date of the payment. This fact appears upon the face of the claim and is raised in this case. Counsel for the claimant seeks to obviate the running of the Statute of Limitations by calling the court's attention to the fact that the Attorney General argues that this court has no right to construe a statute of the State of Illinois, but must wait until the Supreme Court has passed upon and construed the statute. Counsel for the claimant says he agrees with the Attorney General that this court usually will not construe a statute and argues that since the court would not construe the statute and declare the tax to be excessive as levied under the construction given the statute, by the Secretary of State that, therefore, the Statute of Limitations did not begin to run until the Supreme Court of Illinois has construed the statute and the Statute of Limitations was run from the date of such decision by the Supreme Court of Illinois.

We cannot agree with either the Attorney General or the claimant's attorney in this matter. This court does have power to construe statutes where it is necessary on claims brought before this court and can, and often does, reach a different conclusion from the Secretary of State or other officers on questions of construction. It follows, therefore, that the cause of action of this claimant first arose immediately upon the making of the payment and the Statute of Limitations would start to run from that time. The attorney for the claimant makes the further argument that the Supreme Court of Illinois in the O'Gara case has held the statute to be unconstitutional and that the Statute of Limitations should not begin to run except from the time when the Supreme Court of Illinois declared the law to be unconstitutional.

We agree with counsel that this court has no jurisdiction to declare statutes unconstitutional. If the basis of recovery were the unconstitutionality of the statute, we would compute the time for running of the statute from the date of the decision of the Supreme Court so holding the law to be unconstitutional, provided we were convinced the claimant had

used due diligence to have the statute tested and had not slept upon his rights. However, in the case at bar it appears the claimant does not make his claim upon that basis. It follows, therefore, that we must find against the claimant as to the item paid more than five years before the filing of this claim. This item was $1,031.30. The court is of the opinion that the remainder of the said claim is just and that the State in equity and good conscience should pay it, and, therefore, awards the claimant the sum of $1,235.60.

(Claims allowed.)

FRANK W. PETERSON AND MARY PETERSON, HIS WIFE, 997; ELIZA MONAHAN, 998; CONCEZIO DEACETIS, 999; JOHN PETRUSKA AND MARGARET PETRUSKA, HIS WIFE, 1000; JOHN AUGUST ROSELL AND SELMA ROSELL, HIS WIFE, 1001; JOHN AUGUST ROSELL, 1002; GUSTAV A. HOLMES AND MARY HOLMES, HIS WIFE, 1003; JOHN E. SCHWAB, 1004; MARGARET KESSLER, 1005; R. L. FITZGERALD, 1006; OSCAR E. BUSCH, 1007; FRANK BALOGH AND ELIZABETH BALOGH, 1008; VICTOR ANDERSON, 1009; ROYCE F. ZINGER, *et al.*, 1011; EMMA BUCHMEIER KEELER, 1012; GEORGE F. PIERCE AND LILY PIERCE, HIS WIFE, 1013; CHARLES LINDSTROM, 1014; Claimants, *vs.* STATE OF ILLINOIS.

Opinion filed May 26, 1927.

HARD ROADS—*when award may be made for damages sustained by construction of.* Where by the construction of the State hard road claimants sustained damage to their property by being deprived of access to their property, or to access to the public thoroughfare on which their property fronts, and are deprived of the light and air, an award may be made to them for the damages sustained.

SNAPP, HEISE & SNAPP, for claimants.

OSCAR E. CARLSTROM, Attorney General; WILLIAM E. TRAUTMANN, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

All of said claims were brought on account of the construction of a hard road known as Route 22, running from the Indiana State line on the east to the Mississippi river on the west, it being alleged by claimants that during the year 1925 this road was constructed upon and along a road called East

Cass street, just outside the city limits of the city of Joliet, Illinois, and that a long, high and wide viaduct was built over the railroad tracks and right of way of the Elgin, Joliet and Eastern Railway Company, with long and gradual approaches thereto, and which viaduct is along and in front of the property of the claimants. It is further alleged that said viaduct was built in such a manner as to occupy all of the street or roadway and raised the roadbed thirty feet and upward fronting the properties of claimants, depriving claimants of the light and air and practical access to the public thoroughfare of said claimants' property fronts.

Evidence was heard and the following stipulation was agreed upon and executed in behalf of the claimants by their attorneys, Snapp, Heise & Snapp, and the defendants, The State of Illinois, by its Attorney General, Oscar E. Carlstrom, which stipulation is, in words and figures, as follows, to-wit:

"It is agreed and stipulated between the parties, upon a consideration of the provisions that the testimony of the minimum witness as to the total amount of damages to property be agreed upon, except as to the damages in No. 999 and 1004, in which cases the damages are increased to an amount based upon actual offers for the purchase of the property, and that the undisputed proof of damages to business is also agreed upon, except that the damages in No. 1014 be reduced to an amount $1,000.00 less because of a clerical error in computation made by counsel for the petitioners. It is further stipulated that in No. 1011 the property damages agreed upon shall be the minimum amount as disclosed by the proof and business damages in said No. 1011 shall be the amount disclosed by the uncontroverted proofs.

It is further stipulated that the following amounts arrived at as aforesaid are agreed upon:

No.	*Claimant—Injury to Real Estate*	
997	Peterson	$ 2,500.00
998	Monahan	1,500.00
999	Deacetis	12,500.00
1000	Petruska	3,100.00
1001	Rosell	3,000.00
1002	Rosell	3,500.00
1003	Holmes	2,500.00
1004	Schwab	3,000.00
1005	Kessler	7,800.00
1006	Fitzgerald	4,500.00
1007	Busch	3,600.00

1008	Balogh	2,950.00
1009	Anderson	1,500.00
1012	Keeler	2,450.00
1013	Pierce	1,550.00
1011	Zinzer	15,000.00

Injury to Business

999	Deacetis	2,400.00
1006	Fitzgerald	1,600.00
1011	Zinzer	10,000.00
1014	Lindstrom	1,736.40

It is therefore considered by this court, by reason of said stipulation, that the claimants be allowed the amount specified in said stipulation, and it is now herein recommended that claimants be allowed the amounts as hereinafter set forth:

No.		
997	Frank W. Peterson and Mary Peterson, his wife	$ 2,500.00
998	Eliza Monahan	1,500.00
999	Concezio Deacetis	14,900.00
1000	John Petruska and Margaret Petruska, his wife	3,100.00
1001	John August Rosell, and Selma Rosell, his wife	3,000.00
1002	John August Rosell	3,500.00
1003	Gustav A. Holmes, and Mary Holmes, his wife	2,500.00
1004	John E. Schwab	3,000.00
1005	Margaret Kessler	7,800.00
1006	R. L. Fitzgerald	6,100.00
1007	Oscar E. Busch	3,600.00
1008	Frank Balogh, and Elizabeth Balogh	2,950.00
1009	Victor Anderson	1,500.00
1011	Royce F. Zinzer, et al.	25,000.00
1012	Emma Buchmeier Keeler	2,450.00
1013	George F. Pierce and Lily Pierce, his wife	1,550.00
1014	Charles Lindstrom	1,736.40

(No. 1039—Claimant awarded $2,500.00.)

ANDREW C. ANDERSON AND ESTHER ANDERSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

PROPERTY DAMAGE—*award may be made. Inspection by court.* There being no dispute as to the facts in this case and from a personal inspection of the property by the court, an award is entered in favor of claimants for the amount of their claim.

HALL & DUSHER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

It appears to the court that from personal inspection of the property and road in question and the recent improvement

thereof, that prior to the time the said State road was built, that there was a very good road on the stretch of road adjacent to said premises, and consequently the new road did not give a value to the property, that it would give in the event that there was a dirt road or inferior road before the last improvement was made, which facts were not disclosed to the court before personal inspection. Consequently, in this particular case, it does not appear to the court that the new road added any particular value to the property of the claimant.

The court is further advised that the Department of Public Works and Buildings had made a statement that the sum of $3000.00 would be a liberal allowance, and the court has been further advised on statements of the Attorney General in open court that, if an award was made, the sum of $2,500.00 would be reasonable.

Therefore, from the records, personal inspection by the court, statement of the Department of Public Works and Buildings and statement of the Attorney General in open court, this court recommends an allowance of $2500.00.

(No. 1077—Claimant awarded $500.00.)

JOHN TREBUSAK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

GOVERNMENTAL FUNCTION—*hard roads. When State not liable.* The State in the construction of its system of hard roads exercises a governmental function and is not liable for the torts or negligence of its employees or officers engaged in its construction.

SOCIAL JUSTICE AND EQUITY—*award may be made.* Although the State is not liable for the torts or negligence of its employees or agents in the construction of its hard roads, as a matter of social justice and equity an award may be made to claimant.

PAUL D. PERONA, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The evidence in this case shows that the claimant, John Trebusak, in the month of September, 1924, and for a long time prior thereto, was and still is the owner of and in actual possession of the following real estate, to-wit: A certain tract of land which is legally described as .21 acres sit-

uated in Township Number Thirty-three (33) in Section Thirty-three (33) in the county of LaSalle, State of Illinois, and located adjacent to and along Route 2, the same being concrete highway commonly known as the State highway. At a point about 350 yards southeast from the junction point of Routes 2 and 7, both hard-surfaced roads, the piece of land above described has a frontage of 165 feet along and on said Route 2 and extending 115 feet wide or deep at the east end and 53 feet wide or deep at the west end, that during the month of September, 1924, and prior thereto the claimant and his family resided in the house located on the above described premises in the village of Jones, a small town about three miles south of LaSalle.

The claimant alleges that the State of Illinois, through its duly authorized agents, caused to be laid in said premises during September, 1924, hard-surfaced road commonly known as Route Number 2, which is along and adjacent to the said premises. In the construction of this road, the State of Illinois' duly authorized agents and servants caused to be placed a large amount of earth and other material, which it had excavated in the laying and making of said highway upon the real estate of said claimant, John Trebusak, covering all of the frontage along said Route Number 2 of said real estate for from 10 to 15 feet wide and ranging from 3 to 18 feet high all along his land.

A demurrer has been filed to the declaration, which, as a matter of law, is sustained, but this court, in equity, social justice and good conscience, believes that an award should be made, and the Attorney General's office has agreed that an award of $500.00 should be made to the claimant.

We therefore award the claimant the sum of $500.00.

(No. 1082—Claim denied.)

MARGARET C. COREY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

STATUTE OF LIMITATIONS—*when claim barred.* Under Sec. 10 of Court of Claims Act, all claims against the State are barred, unless filed within five years after it first accrues, except as to persons under disability.

SAME—*Sec. 10, is a special limitation statute.* The general statute of limitations does not control or apply to claims against the State, as Sec. 10 of Court of Claims act is a special limitation statute.

GERALD G. GINNAVEN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Claimant filed a claim in this court on September 3, 1926. She alleges that she is the owner of two certain promissory notes designated as No. 4027B and 4669B that were issued by the fund commission of the State of Illinois in 1840, and said notes or bonds are in the sum of $100.00, and are to draw 6% interest from the date of making until paid, and that the notes or bonds are signed by J. Hogan, Pres., of the fund commission, and by William Prentic, Sec., of the fund commission, and were endorsed, "Pay to bearer" and signed by John Hogan, Commissioner. The claimant, by her affidavit, sets forth that she is the owner and bearer of the instruments sued on; that the original notes or bonds were owned by her grandfather and grandmother and that she is the only heir-at-law through them, and that said original notes and bonds were owned by her grandfather and grandmother as aforesaid. The total amount claimed is $296.00, principal and interest.

It is the opinion of this court that the following extract from Section 10, Paragraph 436, Chapter 37, Smith-Hurd's Revised Statutes, 1925, page 856 (Court of Claims Act), controls in this action, which is as follows:

Every claim against the State cognizable by the Court of Claims, shall be forever barred unless the claim is filed with the secretary of the court, within five years after the claim first accrues, saving to infants, idiots, lunatics, insane persons and persons under disability at the time the claim accrued two years from the time the disability is removed.

It must be conceded that, owing to the fact that the Court of Claims was created by the legislature, the court is neces-

sarily limited to authority given by the legislature, and the court must strictly adhere to the language of the statute in the consideration of the claims before it. This court does not consider that the Statute of Limitations generally would control with the special limitations directed in the Court of Claims Act. The claimant urges that the Statute of Limitations has no application in this case, as said act was passed in 1872, stating that all actions shall be commenced within ten years next after the cause of action accrued because these instruments are not classified as demand notes under the negotiable instrument act which was passed March 18, 1874; said act provides, in Paragraphs 217 and 218, as follows: "The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage hereof. In any case not provided for in this act the rules of the law merchant shall govern."

It is the opinion of this court that this contention of claimant cannot be reconciled or considered in view of the express limitations in the Court of Claims Act. The legislature clearly indicates the time in which a claim shall be filed in order to be considered by this court. We cannot construe any exception excepting that part of said statute which refers to infants, idiots and lunatics.

Therefore, the only course that this court has to follow is that which is indicated in the Court of Claims Act, which clearly indicates beyond any uncertainty the time which all actions must be filed upon which the court is permitted to take jurisdiction, and for these reasons this case is dismissed.

(No. 1099—Claimant awarded $2,749.92.)

ELECTRIC HOUSEHOLD UTILITIES CORPORATION, FORMERLY HURLEY MACHINE COMPANY, A CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

FRANCHISE TAX—*refund may be awarded for excess payment.* This case is controlled by the decision of the court in case of *Altorfor Bros.* v. *State, supra.*

PAUL O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claim in this case is for excess annual franchise taxes paid in the years 1920, 1921 and 1922. The excess amount paid in each of those years was as follows:

In 1920	$6,568.00
In 1921	5,234.58

These sums aggregate $11,802.58. In addition thereto, the claimant paid in 1922 the sum of $2,749.92. These figures are not in dispute and represent the excess amount paid under the construction of the statute as given by the Supreme Court of Illinois in the case of *People, ex rel, Roberts & Schaefer* v. *Emmerson,* 305 Ill. 348. The same questions are involved in this case as were involved in the Altorfer Brothers case and our conclusions with reference to them are the same.

There is, however, an additional defense in this case which did not occur in the Altorfer case and that is the defense of the Statute of Limitations. As to the first two items, aggregating somewhat over $11,000, the money was paid more than five years prior to the filing of the claim. For the reasons which we have heretofore given at length in the case of Booth Fisheries Company, we are constrained to disallow that part of the claim of this claimant. We, however, do allow and award to the claimant the sum of $2,749.92, paid in 1922, which sum we believe the State in equity and good conscience should pay.

(No. 1140—Claimant awarded $3,000.00.)

CHARLES SIMMONS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

EQUITY AND GOOD CONSCIENCE—*when award may be made.* Where an employee of the State is engaged in a hazardous and dangerous employment, and is injured while in the performance of his duty, an award may be made to him, as a matter of equity and good conscience.

CARL CHOISSER, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant alleges that he was employed by the State of Illinois as an attendant at the Jacksonville State Hospital, Jacksonville, Illinois, on and prior to the 2nd day of June, A. D. 1926; that on that day while he was caring for a patient in said hospital, a patient by the name of Palmer seized him by the left hand and bit off the end of the index finger of said hand; that the wound from said bite became infected and as a result of the bite the claimant became infected with syphilis.

The Attorney General raises the question as to whether claimant contracted this disease from the bite of said patient or not. However, there does not appear to be any contradiction but that claimant is infected with said disease and from all the record it appears to the court that there is no question as to the fact that the patient bit with his teeth and mouth and took off the end of the claimant's finger and it can well be considered that this was very dangerous and serious to claimant. The claimant's task was hazardous and dangerous and this disease is of a sad and serious type.

Therefore, following the policy of this court in former opinions as to the treatment of the employees of the State in the same manner as if they were employees of private corporations and individuals and as a matter of equity and good conscience this court recommends that claimant be allowed $3000.00.

(No. 1148—Claimant awarded $6,463.63.)

WILLIAM J. BRENNAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

CONTRACT—*State highway. When State not liable.* The State is not liable for loss accruing to a contractor in the construction of a part of its State highway.

SAME—*when award may be made. Reimbursement.* Where it appears that numerous changes of a different nature occurred in doing the work under the original contract than was originally contemplated by the parties, which occasioned additional expense in the performance of the contract by claimant, an award may be made to the contractor, on grounds of equity and good conscience, to reimburse him for the additional expense incurred.

LEE O'NEIL BROWNE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed by claimant in this case alleges that on November 10th, 1924, he entered into a certain contract of excavation to be done and executed by claimant, with the State of Illinois, represented by one William L. Sackett, then Superintendent of Waterways of the State of Illinois, which contract is set out verbatim in said declaration; that claimant, at the time of, and prior to the execution of said contract and prior to the putting in of his bid for the doing of said work by claimant, was assured by said Sackett that if he, claimant, would put in his bid at the figure which he did put it in at, and if, in the doing of the work it was found that he, claimant, could not do it at that figure, and come out whole, either because of unexpected developments in said work, or because radical changes resulting in additional work than appeared at time of entering into the contract, then that he, claimant, should be reimbursed over and above the contract to the extent of the reasonable cost thereof to claimant, plus ten per cent of the usual per cent allowed contractors over and above the cost; and that it was only because of this assurance on the part of said Sackett that claimant made the bid that he did, and entered into said contract; that he began work under said contract in November 1924, and concluded it in June of 1925; that after he began the work, the State, through its said Department of Waterways, did many things, in the course of other construction, which entirely changed the character of

the work to be done by claimant, and doubled and even trebled the labor involved; that this result to claimant was admitted by the said Department; and claimant avers that under the conditions presented at the time the bid was made, and the contract was executed, the work to be done did not require an expensive steam hoist, but could be done with "slips" or "wheel-scrapers"; but, by reason of the change of conditions resulting from the action of the Department, the work required the almost constant use of a steam-hoist, the customary rental of which is twenty dollars per day; that by reason of the unanticipated action of the Department relative to other construction, the distance of haulage, and the work of excavation, were both more than doubled in much of the work, and in fact some of the work rendered very difficult of accomplishment at all; that under said contract, in the doing of the work thereunder, he excavated and moved 10,652 yards; that he has been paid on that by the State of Illinois, the sum of $4,793.40, or 45 cents per yard; that this excavation has cost him, figuring his own working time put in, at $6.00 per day, and the steam-hoist rental at $20.00 per day, the sum of $10,131.33; that adding thereto 10% that he, claimant, as contractor, is entitled to, the total he should be paid on said contract, is $11,257.03 and that there is accordingly due and owing to claimant from the State of Illinois, the sum of $6,463.63, and claimant sets out an itemized statement of expenses incurred by him in the progress of said work, which is verified by affidavit.

The demurrer filed by the Attorney General of the State of Illinois, is sustained as a matter of law.

From the evidence in the case it appears that numerous changes occurred to make the work involved in the excavations called for in the contract more difficult and of a different nature than was originally contemplated. Among other things claimant testified as follows: "They let the spillway at the Pecumsaugan and instead of my taking the deposit out of the canal and throwing it up on the bank I had to move it up over the side and then take it over the bank and before the contract was let they let the water go through the canal in the main channel and after the men started to work at the spillway, they dammed the water up and kept it in the canal so that I had to work in a foot of water most of the time instead of dry land and an overhaul besides,—it more than doubled the

length of the haul. There were rocks in there that made it impossible to get them out of the water and I had to get chains and chain them to get them out."

While we do not concede that there is any legal liability on the part of the State of Illinois to reimburse claimant on account of the loss which he has sustained under the contract in question, we feel that in equity and good conscience, he should be paid for the expenses actually incurred by him in perfecting the work which he undertook, inasmuch as changes in the natural condition of the earth took place after the contract was entered into, without fault on the part of the claimant, and we accordingly award him the sum of $6,463.63.

(No. 1149—Claimant awarded $5,000.00.)

CLARA CARROLL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 20, 1927.

LEASE—*when State as lessor not liable.* The State as lessor of its property is not liable for injuries sustained by claimant by reason of a defect in the premises occupied by its lessee.

EQUITY AND GOOD CONSCIENCE—*award may be made.* An award may be entered in favor of claimant on grounds of equity and good conscience, although no legal liability exists against the State.

LEE O'NEIL BROWNE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed by claimant alleges that she is a married woman living with her family in the city of Ottawa, in LaSalle county, Illinois; that on September 6, 1925, and for a number of years prior thereto, and from thence down to the present time, the State of Illinois was, and still is, the owner of and possessed of a large tract of land located in said county, consisting of about 1,000 acres, known and called "Starved Rock State Park"; on and within which, at a certain point there were, are now and have ever been since said defendant owned said territory, certain buildings, to-wit:—a large hotel and annex, a large refreshment pavilion and other buildings and structures, all of which defendant leases to concessioners at certain fixed prices, to operate and carry on, for

remuneration, for the accommodation of the general public who travel to said park and patronize said concessions; that it is the duty of defendant to keep said buildings and appurtenances thereto reasonably safe for the use of the general public; that one of said buildings, viz., the refreshment pavilion, is an enclosed building, having within it, among other spaces, an ice cream and refreshment parlor with tables and chairs, at which tables customers are served, which said building has along the front of it on the west or entrance side, a long porch running north and south, which said porch is elevated above the surrounding ground a space of six feet, which said porch is reached by a set of steps extending from the ground up to said porch, composed by treads and risers, ten to twelve feet long; that the surface of the ground upon which said pavilion is located, and for a considerable distance surrounding same, was on said day and for a long time prior to said day, covered with a fine hard sifting sand, that, by the action of the wind and otherwise, forms and formed a fine thin film or coating over every adjacent structure, including the steps and porch in question; that on the day in question said steps and treads and said porch were each and every one covered with said film or thin coating of fine sand; that said film rendered same slippery and unsafe for those of the visiting public who had occasion to pass up said steps onto said porch; that defendant should have a substantial, permanent, handrail at each side of said flight of steps and a handrail down the center of said flight of steps, to the end that those of the public who had occasion to pass up and down said steps might take hold of one of said handrails and avoid falling in case of stepping on said film or coating of fine sand; that defendant wholly regardless of its duty in that behalf on date aforesaid, negligently failed and neglected to place any guard or handrails at either side or in the center of said flight of steps and failed to keep said treads of said flight of steps free from said film or coating of sand, and by reason thereof, claimant on said day as she was about to descend said flight of steps, and while in the exercise of all due care and caution for her own safety, slipped and was thrown and fell violently to and upon said steps, breaking her knee cap or her right knee completely in two and otherwise seriously injuring her; that by reason thereof she has been compelled to lay out large sums of money endeavoring to be cured of her said injuries, to-wit:—$300.00;

that she was prevented from doing her house work for many months, having to hire it done, and was compelled to move about on crutches till the latter part of the month of March succeeding her injury, and she claims damages in the sum of $5,000.00.

The State of Illinois, by the Attorney General, has filed a demurrer to this declaration, which is sustained as a matter of law.

While there is technically no legal liability on the part of the State of Illinois, to reimburse claimant, on account of the injuries received by her as set forth in the declaration, in equity and good conscience, we award claimant the sum of $5,000.00.

(No. 1150—Claimant awarded $3,006.97.)

ILLINOIS TRACTION, INC., A CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

ILLINOIS & MICHIGAN CANAL—*State not liable for damage caused by overflow.* **The State is not liable for damages caused by overflow of water from the Illinois & Michigan Canal.**

EQUITY AND GOOD CONSCIENCE—*award may be made.* **Although no legal liability exists against the State, an award may be made in favor of claimant for the amount of its claim.**

LEE O'NEIL BROWNE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed by claimant, alleges that it is a corporation organized and doing business under the laws of the State of Illinois; that the defendant, the State of Illinois, on to-wit:—September 23, 1926, and for a long number of years prior thereto was the owner and in control, possession and operation of a certain waterway or canal known as the Illinois and Michigan canal, which extended from the city of Joliet on the east to the city of LaSalle on the west, and extended in a general easterly and westerly direction through sections 9 and 16 and 17, in township 33, north, range 3, east of the 3rd P. M., in LaSalle county, Illinois; that said claimant was on said day and for along time prior thereto, engaged in operating an interurban electric railway company extending from the city of Princeton, in Bureau county, Illinois to

the city of Joliet in Will county, Illinois, which said railway extended through said LaSalle county; that said claimant was the owner and in possession of a certain right of way with certain ties, rails, poles and other equipment incident to the operation of an electrically operated interurban railway company, which right of way and equipment was located through said sections 9, 16 and 17, township and range aforesaid, said sections being south of and parallel to the said canal or waterway known as the Illinois and Michigan canal; that it became and was the duty of said defendant in its ownership, control and maintenance of said waterway or canal, to build, keep and maintain the sides or embankments of said waterway or canal in reasonably good condition and repair; that defendant, wholly regardless of its duty in the premises, failed and neglected to build, keep and maintain said sides or embankments of said waterway or canal in reasonable repair and condition to retain and hold water flowing through said canal or waterway, but on the contrary permitted and caused, through its negligence, the said sides or embankments to become weakened and out of repair, so that they could not reasonably hold or retain the water in said waterway or canal; that by reason of the said negligence of said defendant, said south side or embankment of said waterway or canal in said section 9 was broken open and washed away by the water in said waterway or canal, and large and unusual quantities of water were precipitated upon and permitted to flow upon, at great speed and velocity, the right of way of said claimant so located in said section sixteen; that as a result of the negligence of said defendant, said right of way of complainant and said tracks, ties, rails, poles, and other equipment were washed away, destroyed and made worthless, and the business suspended and interrupted; that claimant has expended the sum of $2,318.42 in making necessary repairs and restoring said right of way and property; that the loss in operating revenue amounted to the sum of $688.55, and claimant asks damages in the sum of $5,000.00.

The demurrer filed by the State of Illinois, by the Attorney General, is sustained as a matter of law.

While there is no legal liability on the part of the State of Illinois, to reimburse claimant on account of the losses sustained by it as aforesaid, in equity and good conscience we award claimant the sum of $3,006.97.

(No. 1152—Claimant awarded $2,767.34.)

COUNTY OF LASALLE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

ILLINOIS & MICHIGAN CANAL—*State not liable for damages by overflow of waters from.* This case is controlled by the decision of the court in the case of *Illinois Traction Co.* v. *State, supra.*

LESTER J. HORAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed by the county of LaSalle, in the State of Illinois, to recover damages to crops and ditches on the county home, of said LaSalle county, on account of the flooding of lands of claimant and the destruction of crops, etc., by the bursting of the south bank of the Illinois and Michigan canal, at a distance of about three miles west of the city of Ottawa, in said LaSalle county, in the sum of $2,767.34. The declaration filed sets out in an itemized account the losses sustained to the crops and the labor necessary to resow same, and to refill the ditches and gulleys and to reestablish the farm in tillable condition, and further represents that claimant maintains said county home, being a home for the unfortunate and friendless residents of said county, who, through infirmities of body or mind, are compelled to take advantage of the home provided for them by said county, that said home is located about three miles west of the city of Ottawa, Illinois; that said institution consists of several large buildings equipped for the uses intended and located on a farm of about 300 acres, situated in sections 16 and 17 in township 33, north, range 3, east of the 3rd P. M., in LaSalle county, Illinois; that said claimant actively farms said lands, raising alfalfa, potatoes, ensilage, field corn and such other crops as are usually raised on a farm, all of the work incident to said farming being done under the direction of a county warden and county home committee, the former elected by the board of supervisors, the latter an appointee of the chairman of the board of supervisors of the county of LaSalle, by and with the consent of said board; that said farm is located immediately south of the south bank of the Illinois and Michigan canal, about three miles west of the city of Ottawa; that

through the negligence of the State of Illinois, in allowing the bank of said canal to become defective, on or about September 23, 1926, the south bank of said canal gave way and burst approximately at the east end of the lands owned by claimant and that the flood of waters ran down over and through the lands of claimant, and flooded or drowned out the crop of alfalfa, potatoes, the ensilage planting and considerable portion of the field corn then growing on said farm.

The demurrer filed by the Attorney General of the State of Illinois, is sustained as a matter of law.

We do not concede any legal liability on the part of the State of Illinois to reimburse claimant on account of the losses sustained, but on the grounds of equity and good conscience, we make an award which will pay for the losses so sustained, or the sum of $2,767.34.

(No. 1154—Claimant awarded $3,000.00.)

R. H. MUSICK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

WORKMEN'S COMPENSATION ACT—*award may be made under provisions of.* There being no dispute as to the facts and law in this case the court enters an award in favor of claimant for the amount of his claim.

ORMAN RIDGELY, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF and FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Claimant states that he received an injury on May 18, 1925 in the course of his employment while working as a State Highway patrol officer for the State of Illinois. He alleges that on that day while patrolling on Route No. 8 on the road between El Paso and Eureka in attempting to pass a farm wagon on this road, his motorcycle struck the wagon and the same was overturned and his right leg struck and was broken just above the knee joint.

In passing on this case this court would state that if there was any element in this case that would warrant the consider-

ation of the doctrine of reasonable care, it would in the opinion of the court attract attention of the court.

However it seems the only issue for the consideration of the court is the extent of the injury and the amount that should be allowed, having in mind the rules of the Workmen's Compensation Act. It would appear in the first instance that the amount claimed for physicians and nurse is rather high, but as there is no question in this record raised as to whether or not the same was reasonable and customary, it will not be discussed here.

The Attorney General comes and files a statement, that, figuring this claim on the basis of the Workmen's Compensation Law, the claimant is entitled to $3,000.00.

Therefore the court recommends that an award of $3,000.00 be made in this case.

(No. 1162—Claimant awarded $400.00.)

MOLLER AND VANDENBOOM LUMBER CO., A CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

CONTRACT—*when State liable for supplies and material.* **The State is liable for material and equipment furnished for repairs on its property, at the request of an authorized department of the State.**

PAUL G. WEISENHORN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed by claimant alleges that it is a corporation, located at Quincy, Illinois, organized, existing and doing business under and by virtue of the laws of the State of Illinois; that on September 26th, 1925, at Quincy, Illinois, the State of Illinois became and was indebted to claimant in the sum of $400.00; that on June 9th, 1925, the Illinois Soldiers' and Sailors' Home, situated in Quincy, Illinois, issued a repair and equipment requisition, 265, which was authorized June 27, 1925; that on journal voucher No. 548 from the Department of Public Welfare to said Illinois Soldiers' and Sailors' Home of Quincy, Illinois, appeared entry of special item for repair and equipment listed cornerib, $600.00; that

under said requisition is listed an item of $400.00 for lumber to apply on said corncrib listed on above mentioned journal voucher 548, from the Department of Public Welfare, State of Illinois; that under said requisition certain lumber and roofing, an itemized statement of which is attached and made part of said declaration, was sold and delivered by said Moller and Vandenboom Lumber Company of Quincy, Illinois, to said Illinois Soldiers' and Sailors' Home; that no part of this account has been paid and that there is now due and owing to claimant said sum of $400.00.

A demurrer filed by the Attorney General of the State of Illinois, is sustained, as a matter of law.

An affidavit of Daniel P. Wild, Chief Clerk of the Illinois Soldiers' and Sailors' Home, furnished to Hon. Leslie Small, Director of the Department of Purchases and Construction, states that this is a good and valid claim and the Illinois Soldiers' and Sailors' Home will not contest the claim.

We accordingly award claimant the sum of $400.00.

(No. 1165—Claim denied.)

JOHN LYNVILLE ROUNDTREE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

MILITARY SERVICE—*when State not liable.* It must be shown by claimant that he was a member of the Illinois National Guard, and in active service, at the time he sustained the injury complained of, otherwise the State is not liable.

J. W. TEMPLEMAN, for claimant.

Oscar E. Carlstrom, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is an action brought by claimant to recover $5,000.00, for an injury he claims to have received while he was a member of Troop B, 106th Cavalry of Illinois National Guard. The allegation shows the claimant was thrown upon the pommel of his saddle while riding with his troop. The defendant comes and claims that claimant was not a member of the said Illinois National Guard at the time he alleges the injury took

place. The claimant sets forth that he was injured in the service in August, 1922. Defendant claims that he was discharged on April 6th, 1922.

It is the opinion of the court from the records in this case and after closely examining the evidence and arguments of counsel in the case that the showing is not sufficient to satisfy the court that the claimant was a member of the Illinois National Guard at the time of his injury. Therefore this claim is dismissed.

(No. 1167—Claimant awarded $1,359.00.)

JOSEPH BRYAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

ILLINOIS & MICHIGAN CANAL—*State not liable for overflow of water from.* **This case is controlled by the decision of the court in the case of *Illinois Traction Co.* v. *State, supra.***

MILLS, RICHARDSON & HELFFRICH, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed in this case alleges that on September 23, 1926, claimant was and from thence hitherto has been and still is, lawfully possessed of about sixty acres of land, located in Section 9, Township 33, North, Range 3, East of the 3rd P. M., in LaSalle county, Illinois, lying on the two path side of the Illinois and Michigan canal and located immediately south thereof; that plaintiff was possessed of said real estate by virtue of a lease entered into between him and the Ottawa Silica Company, of Ottawa, Illinois, as tenant thereon for a term of years at an annual rental of $10.00 per acre; that said real estate is tilled and farmed, there being raised thereon field corn, alfalfa and such other crops as are usually grown and raised on farms; that the State of Illinois was possessed of, owned, operated, maintained and continued a certain canal or waterway, known as the Illinois and Michigan canal, along the north side or line of said real estate, which canal or waterway is of the width of fifty feet and of the length of 100 miles; that defendant wrongfully, negligently and carelessly permitted and allowed the banks of said canal

or waterway to become unsafe, weak and defective, and wrongfully, negligently and carelessly failed to keep and maintain said banks of said canal or waterway in a safe and proper condition; that by reason thereof, on to-wit: September 23, 1926, the south bank of said canal or waterway, known and described as the Illinois and Michigan canal, gave way, burst and opened at a point approximately 500 feet east of the west line of said premises of claimant and thereby admitted and caused the flow of large quantities of water, which naturally flowed in and through said canal, over, upon and across and into the said lands and premises of the said claimant and there remained, and thereby greatly injured, damaged and destroyed the growing crop of field corn and alfalfa of claimant, to-wit: Thirty acres of field corn and four acres of alfalfa of the value of $1,239.00. Attached to said declaration and made a part thereof is an itemized statement of the grain and crops for which damages are claimed.

The demurrer filed by the Attorney General of the State of Illinois, is sustained as a matter of law.

While there is no legal liability on the part of the State of Illinois to reimburse claimant on account of the losses above enumerated, in equity and good conscience we feel that he should receive some remuneration for the loss of a large percentage of his year's crops, which of course, comprise to a large extent the income from which a tenant farmer earns his livelihood, and we accordingly award claimant the sum of $1,359.00.

(No. 1172—Claimant awarded $250.00.)

JOYCE-WATKINS COMPANY, A CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

FRANCHISE TAX—Claimant is entitled to a refund of the franchise tax overpaid which is in excess of the amount legally due the State.

FISHER, BOYDEN, KALES & BELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim to recover $250.00, franchise fee paid in excess of the legal fee due, through error in computation, on

increased capital stock for the year beginning July 1, 1926 The declaration states that the sum lawfully due and payable by said corporation on July 1, 1926, as franchise tax, computed at the rate of five cents on each $100.00, of the old capital stock of $1,000,000.00, as provided in Section 105 of the General Corporation Act, was $500.00; that on said date said claimant paid to the Secretary of State of the State of Illinois, the sum of $750.00, being the amount called for by the statement for franchise tax then due and payable, which sum was in excess of the amount legally due.

A statement of the Attorney General of the State of Illinois, rendered at the request of Louis L. Emmerson, Secretary of State of the State of Illinois, consents to the award of $250.00.

We accordingly award claimant the amount of their claim, or $250.00.

(No. 1183—Claimant awarded $411.76.)

FRANK CHANNING, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

QUARANTINE—*when State not liable for animals destroyed.* The State is not liable for the slaughter of cattle affected with contagious or infectious disease, unless claimant complies with the provisions of the statute providing for such compensation.

EQUITY AND GOOD CONSCIENCE—*award may be made to reimburse.* Where claimant is without fault on his part in the shipment of diseased cattle, an award upon equitable grounds may be made to reimburse him for the difference between the amount he received for the cattle as salvage and the appraised value thereof.

SCHUYLER, ETTLESON & WEINFELD, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed by Frank Channing to recover the sum of $411.76, under paragraph 94, chapter 8, Smith-Hurd's Illinois Revised statutes, 1925, which provides remuneration to the owner for cattle destroyed pursuant to the provisions of an act for the eradication of bovine tuberculosis. The declaration alleges that on December 18, 1925, at Hampshire, Illinois, claimant was the sole owner of a herd of 27 cattle,

which at claimant's request was given a tuberculin test by the Division of Animal Industry of the Department of Agriculture of the State of Illinois; that on said date, December 18, 1925, the herd so tested reacted; that on January 8, 1926, claimant ordered from the Chicago, Milwaukee & St. Paul Railroad Company's agent at Hampshire, Illinois, one 40 foot car for the purpose of shipping said 27 reactors immediately to the city of Chicago; that said car was not furnished to him until January 14, 1926; that claimant had said cattle ready for shipment on January 14, 1926, and was ready and willing to ship same, but was unable to do so because said railroad company refused to move said car until January 18, 1926; that said cattle were appraised and slaughtered on January 20, 1926; that the appraisal value was the sum of $2,225.00; that the cattle were sold as salvage for the sum of $989.71; that of the balance of $1,235.29 under the statute, if this claim is allowable, the State of Illinois is liable in the sum of $411.76.

The claim was submitted to Honorable S. J. Stanard, Director of the Department of Agriculture, for investigation and report, who reports that the cattle were not shipped within the thirty days allowed by statute and hence the claim could not be allowed by his department.

Looking at this claim from an equitable point of view, we believe that claimant should be reimbursed. The delay in the shipment of the cattle was due to no fault of his. We accordingly award claimant the sum of $411.76.

(No. 1190—Claimant awarded $1,025.00.)

FRANK H. DOWNS, *et al.*, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 20, 1927.

PROPERTY DAMAGE—*when award will be made.* There being no dispute as to the facts or law in this case, the court enters an award in favor of claimant.

THOMAS A. MURPHY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEACH delivered the opinion of the court:

This is a claim for damages to property belonging to the claimants as trustees of Local No. 473 of the United Mine Workers of America, located at LaSalle, Illinois.

The facts in this case were investigated by J. M. McCoy, chief clerk of the Division of Highways of the Department of Public Works and Buildings and from the report of J. M. McCoy, we find that the property described in the statement of claim was damaged to the extent of $1,025.00.

We therefore award the claimant the sum of $1,025.00.

(No. 1196—Claimant awarded $54.00.)

THOMAS R. CRABB, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

REIMBURSEMENT—*when award will be made. State employee.* There being no dispute as to the facts in this case, and no objection by the State, the court enters an award in favor of claimant to reimburse him for moneys expended in being cured of injuries sustained by him, while in the discharge of his duty.

THOMAS R. CRABB, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed in this case alleges that on July 21, 1926, and for a long time prior thereto, Thomas R. Crabb was an employe of the State of Illinois, by appointment of Louis L. Emmerson, Secretary of State of the State of Illinois, as automobile investigator; that his duties under such employment included among other things, a general supervision and regulation of the motor vehicle traffic on the system of hard roads constructed by the State of Illinois; that in the performance of his duties he used a motorcycle, furnished by the State of Illinois; that pursuant to his duties as such automobile investigator, on July 21, 1926, between 10:15 p. m., and 10:30 p. m., he was proceeding from Joliet, Illinois, to Lockport, Illinois; and in exercising all due care and caution for his own safety, he collided with a Ford coupe, driven by one J. L. Gage of Marseilles, Illinois, at the corner of Collins Street, and Meeker Avenue, Joliet, Illinois; that by reason of said collision, he was thrown from the motorcycle upon which he was riding upon and against a telephone pole and was thereby then and there bruised, injured and wounded and suffered injuries to his head, ankle and knee and claimant became and

was sick, sore, lame and disordered and so remained for a long space of time, to-wit: From the 21st day of July to the 17th day of August 1926, both inclusive; that during all of said time he suffered great pain and was hindered and prevented from attending to and transacting his affairs and business, and was forced to and did then and there lay out divers sums of money, amounting to, to-wit, $54.00, in endeavoring to be cured of his said wounds and bruises, and he makes a claim for said sum of $54.00.

A letter from Louis L. Emmerson, Secretary of State, states that he has investigated the facts set out in the declaration in this case, and that said facts are correctly set out and recommends that said claim be allowed.

Therefore we award claimant the sum of $54.00.

(No. 1201—Claimant awarded $1,575.00.)

BESSIE GILBERT SMITH AND ROBERT E. SMITH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 26, 1927.

ILLINOIS & MICHIGAN CANAL—*when award may be made.* This case is controlled by the decision of the court in *Illinois Traction Co.* v. *State, supra.*

LEE O'NEIL BROWNE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney general, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration in this case shows that the claimants were the owners of property situated in Section 13, Township 33 North, Range 1, East of the Third Principal Meridian, LaSalle county, Illinois, located one hundred feet south of the Illinois-Michigan canal, approximately three miles due east of the city of LaSalle.

On or about the 8th day of August, 1924, the south bank of the Illinois & Michigan canal broke at a point about two hundred feet from the residence of this affiant and the property above described and that the water therefrom gushed from the break in the bank covering all property belonging to the affiant's wife above stated and continued to flow over said property for four days in a depth of approximately four feet

and that the influx of water from the canal caused damage to said property.

William F. Mulvihill, Superintendent of Waterways, made the following statement:

I have examined the foregoing claim and believing the same to be just and true, the Division of Waterways, Department of Purchases and Construction will not oppose the allowance of the same for the amount claimed, which is $1,575.00.

The Attorney General submits this claim to the court and recommends that an award be made in said cause.

We therefore allow said claim in the amount of $1,575.00.

No. 1086—Claimant awarded $27,515.79.)

THE R. F. CONWAY COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 6, 1927.

CONTRACT—*when State liable. State bond issue.* Where claimant under a combination bid for certain sections of the State Bond Issue Route No. 4, is awarded the contract by the State, and afterwards it is compelled to perform the contracts separately, resulting in damages to it, it is entitled to recover the difference between the combination bid and the next lowest and best bid for the work completed under the separate contracts.

SNAPP, HEISE AND SNAPP, for claimant.

OSCAR E. CARLSTROM, Attorney General; WILLIAM E. TRAUTMANN, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The facts in this case are disclosed in the following stipulation duly executed by the claimant by its attorneys, Snapp, Heise and Snapp, and the defendants, the State of Illinois, by Oscar E. Carlstrom, Attorney General, the said stipulation being in figures and words as follows, to-wit:

STIPULATION.

"Whereas claimants made a combination bid upon sections 28, 29, and 430 of State Bond Issue Route No. 4 upon an agreement that all of said three sections were to be completed in one season and were awarded contracts upon sections 28

and 29 immediately upon the combined bid and were to be awarded the contract for section 430, upon the combined bid, within ten days thereafter and as soon as all the right of way was secured, but owing to the delay caused by the local authorities of the village of Lyons, in the county of Cook, the contract for section 430 could not be and was not awarded until late in the fall, but was awarded on the combined bid. This delay prevented claimant from completing the work on section 430 in one season, to the damage of the claimant claimed by it in the sum of $123,522.05, in accordance with the proofs now taken by deposition herein.

And whereas, the claimant bases its right to recover upon the fact that it was compelled to perform said contracts separately and the lowest and best bid for the separate performance of said contract was in the sum of $664,085.79, and the combined bid of said claimant for the performance of said contracts together was in the amount of $636,570.00, the difference between said two amounts being the sum of $27,515.79.

"And whereas, the State of Illinois is unwilling to pay to the claimant the amount of damages claimed by it but is willing to concede to said claimant the difference between the combination bid of said claimant for the work on said three sections and the next lowest and best bids for said work which were upon separate contracts, it is, therefore, agreed and stipulated between the parties that an award for the benefit of said claimant be entered herein in the amount of $27,515.79."

Therefore this court upon said stipulation and the facts set out therein, recommends that said claimant be allowed the sum of $27,515.79.

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